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PRIDEAUX'S

PRECEDENTS

IN

CONVEYANCING;

WITH

Dissertations

ON ITS

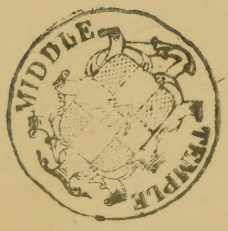
LAW AND PRACTICE.

FIFTEENTH EDITION

BY

JOHN WHITCOMBE,

OF LINCOLN'S INN, ESQ., BARRISTER-AT-LAW.



VOL. II.

LONDON:

STEVENS AND SONS, LIMITED,

119 & 120, CHANCERY LANE,

Law Publishers and Booksellers.

1893.

LONDON:
PRINTED BY C. F. ROWORTH, GREAT NEW STREET, FETTER LANE.

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LEASES.

THE subject of Leases will be considered under the following heads:—I. The nature of a lease, the different kinds of leasehold estates or tenancies, and how they are created. II. The rent reserved upon leases, and the remedies for its recovery. III. The covenants usually inserted in leases in relation to rates and taxes, and the preservation, repair, and insurance of the demised property. IV. Covenants restrictive of the use of the demised property, and against assignment or sub-letting without the lessor's consent. V. The condition of re-entry, and the relief provided by statute against a forfeiture thereunder. VI. The effect of alienation by lessor and lessee as regards the rent and the covenants and conditions of the lease. VII. By what modes, other than forfeiture, a tenancy may be determined, and the rights of the parties at the determination thereof. VIII. Leases under powers. IX. Other matters relating to leases; and X. Stamps on leases and agreements for leases. Division of the subject.

I. *The nature of a lease, the different kinds of leasehold estates or tenancies, and how they are created.*

A lease is an assurance or contract whereby land or any other thing capable of being demised is let by one person to another for an interest less in point of duration than the lessor has therein. A lease may be for lives, or for a term of years, or from year to year, or at will. Definition of a lease.

A lease for a term of years is where a person lets to Lease for a term of years.

another for a certain and definite period. A lease for one year, or for a half year, or for a quarter of a year, is a lease for a term (*a*), so is a lease for a given number of years, if a person shall so long live (*b*).

Tenancy from year to year.

A tenancy from year to year is a tenancy determinable (except in cases coming within the Agricultural Holdings Act, 1883) at the end of the first or any subsequent year by either party giving to the other a half-year's notice to quit, and continuing from year to year until so determined. As regards holdings subject to the above Act, a year's notice expiring with a year of tenancy is substituted for the half-year's notice (*c*).

Tenancy at will.

A tenancy at will is where a man lets to another and either party may put an end to the tenancy at pleasure.

Tenancy from year to year was originally a tenancy at will.

A tenancy from year to year was originally a mere tenancy at will, on which the Courts engrafted a condition that reasonable notice should be given to determine it, which notice was ultimately settled at a half-year's.

Tenancy on sufferance.

A tenancy on sufferance is where a person who entered by a lawful title continues in possession after his estate has determined.

Lease for more than three years must be by deed.

Under the joint operation of the Statute of Frauds (*d*) and the 8 & 9 Vict. c. 106 (*e*), all leases are required to be by deed, except leases not exceeding three years whereupon the reserved rent amounts to two-thirds of the full improved value. And every agreement for a lease, with a similar exception, must be in writing.

Tenancy from year to year, how created.

A tenancy from year to year may be created by an express agreement either in writing or by parol to that effect, or it may arise by implication. Thus if one lets lands to another at an annual rent without any express provision as to the length or terms of the tenancy, the latter becomes tenant from year to year.

Lessee holding over, and paying rent, becomes tenant from year to year.

If a tenant holds over after the expiration of his lease, he is at first a mere tenant on sufferance, but if the landlord subsequently receives rent, the tenant becomes tenant from year to year, subject to such

(*a*) Lit. 58, 67.
(*b*) Co. Lit. 45 *b*.
(*c*) 46 & 47 Vict. c. 61, s. 33.
(*d*) 29 Car. 2, c. 3, s. 1, 4.
(*e*) Sect. 3.

covenants and conditions in the lease as are applicable to that species of estate (*f*), and the same rule applies where a person takes possession and pays rent under an instrument purporting to be a demise for years, but which is invalid as such (*g*).

Covenants to repair, to insure, and as to mode of cultivation, and a condition of re-entry on breach of covenants have been held applicable to a yearly tenancy (*h*).

Instrument void as a lease may be sued on as an agreement.

An instrument purporting to be a demise, but void as such under the Act 8 & 9 Vict. c. 106, as not being under seal, may be sued on in equity as an agreement for a lease, and specific performance will be decreed (*i*).

Rights and obligations of parties under an agreement for a lease.

The position of the parties under an agreement for a lease, of which specific performance will be enforced, including such an instrument as is mentioned in the last paragraph, was, before the Judicature Act, different at law and in equity. At law, the intended lessee took no interest by virtue of the instrument, but if he entered into possession and paid rent, he became by reason of such payment a tenant from year to year upon the terms of the instrument (*k*). In equity, he was regarded as holding on the same terms as if a lease had been actually granted. Since the Judicature Act, the equitable rule prevails in every branch of the Court (*l*).

Option to yearly tenant to have a lease, how long it continues.

If an agreement with a yearly tenant provides that he may at his option have a lease for a specified term, but no time is stipulated within which the option is to be exercised, the landlord may at any time call on the tenant to exercise it, and in default may determine the tenancy, but until this is done, the option

(*f*) Bishop *v.* Howard, 2 B. & Cr. 100; Digby *v.* Atkinson, 4 Camp. 275; Thomas *v.* Packer, 21 Jur. 143; 26 L. J. Ex. 207; Hyatt *v.* Griffith, 17 Q. B. 505.

(*g*) Wood *v.* Tate, 2 Bos. & Pull. N. S. 247; Ecclesiastical Commissioners *v.* Merrall, L. R. 4 Ex. 162; Bishop of Bangor *v.* Parry, (1891) 2 Q. B. 277.

(*h*) See cases mentioned above.

(*i*) Parker *v.* Taswell, 2 De G. & J. 559.

(*k*) Tress *v.* Savage, 4 E. & B. 36; 23 L. J. Q. B. 339; Lee *v.* Smith, 9 Exch. R. 662; 23 L. J. Ex. 198. See also Drury *v.* Macnamara, 5 El. & Bl. 612.

(*l*) Walsh *v.* Lonsdale, 21 C. D. 9.

continues(*m*). And an option of this kind passes by an assignment of the tenant's interest, and if he becomes bankrupt passes to his trustee, and to a purchaser from the trustee (*n*).

Effect of agreement by landlord not to turn out tenant so long as he pays the rent.

Sometimes an agreement purporting to create a yearly tenancy contains a clause to the effect that the landlord will not turn out the tenant so long as he pays the rent. In *Brown* v. *Warner* (*o*), an agreement of this nature was considered by Lord Eldon as a valid agreement for a future lease; and in another case, where the landlord was himself only a lessee for eight years, V.-C. Malins treated the tenant as entitled in equity under such an agreement to remain in possession during the continuance of the landlord's interest (*p*). In a later case, where the lessor held for a long term, it was held that the lease must be limited in duration to the tenant's life (*q*).

Mortgagor in possession, the nature of his tenancy.

A mortgagor of land in his own occupation is sometimes described as a tenant at will to the mortgagee, but it would be more correct to say that he is a tenant on sufferance, and any person who subsequently to the mortgage is let into the occupation of the property by the mortgagor (except under a lease duly made pursuant to the statutory power) is, as regards the mortgagee, in the same position (*r*). If, at the date of the mortgage, the land is in the occupation of a tenant, the mortgagee takes it subject to the tenancy, whether it be from year to year or otherwise, and if (as is usual) the mortgagor continues to receive the rent, he does so under an implied authority from the mortgagee, which authority the mortgagee may at any time countermand by notice to the tenant (*s*).

(*m*) Hersey *v.* Giblett, 18 Beav. 174; Moss *v.* Barton, L. R. 1 Eq. 474.

(*n*) Buckland *v.* Papillon, L. R. 2 Ch. 67.

(*o*) 14 Ves. 156.

(*p*) *Re* King's Leasehold Estates, L. R. 16 Eq. 521.

(*q*) Kinsel *v.* Watson, 11 C. D. 128.

(*r*) Keech *v.* Hall, Doug. 21; Lowe *v.* Telford, 1 App. Cas. 414.

(*s*) Moss *v.* Gallimore, Dougl. 266; Trent *v.* Hunt, 22 L. J. (N. S.) Ex. 318.

II. *The rent reserved on leases, and the remedies for its recovery.*

Rent.

The ordinary consideration for a lease is rent, or an annual return either in money or other things, reserved to the lessor. A power of distress is incident by common law to rent reserved on a lease.

Right of distress may be exercised for six years, if lease continues, and if it has determined for six months afterwards.

Except in cases coming within the Agricultural Holdings Act, 1883, or in case of the tenant's bankruptcy, the right of distress for rent in arrear may be exercised at any time within six years from the time when the rent became due or an acknowledgment in writing of the same was made to the landlord or his agent (*t*), provided that the lease is still subsisting; and if the lease has determined, a distress may be made at any time within six calendar months from its determination, provided that the landlord's title continues and the tenant is still in possession (*u*).

Executors of landlord have same right of distress.

The executors of a deceased landlord have the same right of distress for rent accrued in his lifetime as the landlord would have had if living (*x*).

Preferential right of landlord over ordinary creditors.

The goods of a tenant cannot be taken by an execution creditor without first paying to the landlord one year's rent in arrear (*y*), but this preferential right does not exist (like the right of distress) after the tenancy has determined (*z*).

Right of landlord to seize goods fraudulently removed.

If a tenant fraudulently or clandestinely conveys away goods in order to prevent the landlord from distraining them, the landlord may at any time within thirty days after such conveying away seize the goods wherever they are, and other powers are by statute given to landlords in such case (*a*). But this power of distraining goods fraudulently removed applies only where they would have been distrainable if they remained on the premises, and cannot be exercised if at the time of seizure the tenancy has determined (*b*).

(*t*) 3 & 4 W. 4, c. 27, s. 42.
(*u*) 8 Anne, c. 14, ss. 6, 7.
(*x*) 3 & 4 W. 4, c. 42, ss. 37, 38.
(*y*) 8 Anne, c. 14, s. 1.
(*z*) Cox *v.* Leigh, L. R. 9 Q. B. 333.
(*a*) 11 Geo. 2, c. 19, ss. 1—10.
(*b*) Gray *v.* Stait, 11 Q. B. D. 668.

If tenant is bankrupt, right of distress limited to one year's rent.

If a tenant becomes bankrupt, and the landlord after the commencement of the bankruptcy distrains upon his goods for arrears of rent, the distress is available only for one year's rent accrued due prior to the order of adjudication, but he may prove under the bankruptcy for the surplus (*b*).

Distress for rent due from company which is being wound up, cannot be made without consent of Court.

Under the joint operation of sects. 87 and 163 of the Companies Act, 1862 (*c*), as interpreted by judicial decisions, a distress cannot be levied on the goods of a company which is being wound up without the leave of the Court in any case where the rent in arrear is a debt due from the company to the landlord, and proveable as such. But the rule does not apply where the landlord is a stranger to the company. Thus, if A. lets to B., and B. underlets to, or declares himself a trustee for a company, the Act does not prevent A. from distraining for rent due to him from B., or from seizing any goods of the company which may happen to be on the premises, and which are seizable by him according to the ordinary law of distress (*d*). Leave will be given to a landlord to distrain for rent accrued after the winding-up, in cases where the company retains possession for the convenience of the winding-up, and the realization of the property to better advantage (*e*).

In what cases leave will be given.

In agricultural holdings, right of distress limited to one year.

In holdings to which the Agricultural Holdings Act, 1883 (*f*), applies, a landlord cannot distrain for rent which became due more than one year before the making of the distress (*g*). Where, according to the ordinary course of dealing between the landlord and tenant, the payment of the rent has been allowed to be deferred until the expiration of a quarter or a half year from the date at which it legally became due, the rent is for this purpose to be deemed to have

(*b*) 46 & 47 Vict. c. 52, s. 42.
(*c*) 25 & 26 Vict. c. 89.
(*d*) *Re* Lundy Granite Co., L. R. 6 Ch. 462; *Re* Traders' North Staffordshire Co., L. R. 19 Eq. 60; *Re* Carriage Co-operative Supply Association, 23 C. D. 154.
(*e*) Lundy Granite Co., *ubi sup.*; N. Yorkshire Iron Co., 7 C. D. 661.
(*f*) 46 & 47 Vict. c. 61, s. 44.
(*g*) Except in the case of a holding existing at the time of the passing of the Act. under which arrears are recoverable up to 1st January, 1885.

become due at the expiration of such quarter or half year (*h*).

What goods may be distrained.

All goods found on the premises, whether belonging to the tenant or to a stranger (other than such as are specially protected by law) are distrainable for rent.

Things protected from distress.

Things privileged by law are—(1) things annexed to the freehold; (2) things delivered to a person exercising a public trade to be carried, wrought, worked up, or managed in the way of his trade or employment; (3) things in actual use, *e. g.*, the horse a man is riding on, or the axe in his hand. Beasts of the plough and implements of husbandry, or of a man's trade or profession, are also privileged, if there is a sufficient distress besides (*i*).

Law of Distress Amendment Act protects wearing apparel, &c.

By the Law of Distress Amendment Act, 1888 (*k*), the wearing apparel and bedding of the tenant or his family, and the tools and implements of his trade to the value of 5*l*., are protected from distress, unless the lease or interest of the tenant has expired, and possession of the premises has been demanded seven days before the distress.

Things protected by Agricultural Holdings Act.

Where live stock belonging to another person has been taken in by the tenant of an agricultural holding to be fed at a fair price, such stock cannot be distrained by the landlord, where there is other sufficient distress to be found, and if no other sufficient distress can be found, there cannot be taken by distress a sum exceeding the price agreed to be paid for the feeding, or so much of it as remains unpaid, and agricultural or other machinery hired by the tenant, and live stock belonging to others, and which is on the premises for breeding purposes, cannot be distrained for rent in arrear (*l*).

Appraisement.

A landlord or other person levying a distress may sell the goods and chattels distrained without causing them to be previously appraised, unless the tenant or owner of the goods requires an appraisement; and for

(*h*) Sect. 44.

(*i*) Simpson *v.* Hartopp, Willes, 512; Smith's L. C. 187.

(*k*) 51 Vict. c. 21, s. 4, by reference to 9 & 10 Vict. c. 95, s. 96.

(*l*) 46 & 47 Vict. c. 61, s. 45.

Sale by auction.

Replevy.

Certified bailiff only can levy distress.

the purposes of sale the goods must, at the request of the tenant or owner of them, be removed to a public auction room or some other fit place, and there sold. The tenant or owner may, on giving security for costs, have fifteen days within which to replevy. Distress can only be levied by a bailiff certificated by a county court judge (*m*).

Lodgers' goods protected against distress.

By an Act passed in 1871, the goods of lodgers are protected against distresses for rent due to the superior landlord (*n*). A person who hired what was substantially the whole of the house, the superior tenant only retaining a room in the basement and some attics, has been held to be a lodger within the meaning of this Act (*o*).

Rent may be recovered for six years by action on covenant.

The words "yielding and paying" in a reservation of rent amount to a covenant for payment (*p*). Under such a covenant, or the more formal one generally inserted in leases, it is apprehended that six years' arrears of rent and no more may be recovered by action (*q*).

No apportionment of rent by the common law.

According to the common law, rents reserved on a lease and other rents were not apportionable; consequently if the lessor died between two rent days, the entire rent for the current year, if the lease was a continuing one, went to his heir-at-law or other the person on whom the reversion devolved; and if the lease determined on his death, the whole of the rent for that half-year was lost (*r*).

11 Geo. 2, c. 19; 4 & 5 Will. 4, c. 22.

The Acts 11 Geo. 2, c. 19, and 4 & 5 Will. 4, c. 22, were passed to remedy some of the inconveniences arising from this state of the law, but as the operation of these Acts was only partial, a more complete remedy

(*m*) 51 Vict. c. 21, ss. 5, 6, 7.

(*n*) 34 & 35 Vict. c. 79.

(*o*) Philips *v.* Henson, 3 C. P. D. 26.

(*p*) Giles *v.* Hooper, Carth. 135; Bower *v.* Hodges, 13 C. B. 765.

(*q*) In Paget *v.* Foley, 2 Bing. N. C. 679, 5 L. J. (N. S.) C. P. 258, and Strahan *v.* Thomas, 12 Ad. & Ell. 536, it was held that twenty years' arrears of rent might be recovered in an action of covenant under 3 & 4 W. 4, c. 42, s. 3. But it is apprehended that the last-mentioned enactment, so far as regards rent, has been repealed by implication by sect. 9 of 37 & 38 Vict. c. 57. The point, must, however, be considered as doubtful, until settled by a judicial decision.

(*r*) See 1 Swanston, 337, note, and the cases there cited.

was provided by the Act 33 & 34 Vict. c. 35, by which it is enacted as follows :— 33 & 34 Vict. c. 35.

Sect. 2. From and after the passing of this Act all rents, annuities, dividends, and other periodical payments in the nature of income (whether reserved or made payable under an instrument in writing or otherwise) shall, like interest on money lent, be considered as accruing from day to day, and shall be apportioned in respect of time accordingly. Rents to accrue from day to day and be apportionable.

Sect. 3. The apportioned part of any such rent, annuity, dividend, or other payment, shall be payable or recoverable in the case of a continuing rent, annuity, or other such payment, when the entire portion of which such apportioned part shall form part shall become due and payable, and not before, and in the case of a rent, annuity, or other such payment determined by re-entry, death, or otherwise, when the next entire portion of the same would have been payable if the same had not so determined, and not before. Apportioned part of rent to be payable when next entire portion becomes due.

Sect. 4. All persons and their respective heirs, executors, administrators, and assigns, and also the executors, administrators, and assigns respectively of persons whose interests determine with their own deaths, shall have such or the same remedies at law and in equity for recovering such apportioned parts as aforesaid, when payable (allowing proportionate parts of all such allowances) as they respectively would have had for recovering such entire portions as aforesaid if entitled thereto respectively; provided that persons liable to pay rents reserved out of or charged on lands or other hereditaments of any tenure, and the same lands or other hereditaments shall not be resorted to for any such apportioned part forming part of an entire or continuing rent as aforesaid specifically, but the entire or continuing rent, including such apportioned part, shall be recovered and received by the heir or other person who, if the rent had not been apportionable under this Act or otherwise, would have been entitled to such entire or continuing rent, and such apportioned part shall be recoverable from such heir or other person by the executors or other parties entitled under this Act to the same by action at law or suit in equity. Persons to have same remedies for apportioned parts as for entire portions. Proviso as to rents reserved in certain cases.

Construction of the Act.

The above Act applies to a will made before, and confirmed by a codicil made after, its passing, and (according to judicial *dicta*) to every will coming into operation after its passing (*s*). Whether it applies to an instrument made and coming into operation before its passing, is doubtful (*t*). It applies to a specific as well as a residuary devise, and under it a current half-year's rent is apportionable between the heir or the devisee of the land and the testator's personal estate (*u*).

Application of Act to an assignment of lease as regards the current rent.

If a lease is assigned between two rent days, the rent is apportioned by section 2, and as the case is not within the proviso in section 4, the lessor has a separate right of action against the assignor for the proportion of rent up to the date of the assignment, and against the assignee for the proportion accruing afterwards (*x*).

III. *The covenants usually inserted in leases in relation to rates and taxes, and the preservation, repair, and insurance of the demised property.*

What are usual covenants in a lease.

The usual covenants in a lease for a term of years are, on the part of the lessee, (1) to pay the rent; (2) to pay rates and taxes; (3) to keep the demised premises in repair during the term; (4) to deliver them up in good repair and condition at the end of the term; (5) to permit the landlord to enter and view state of repair, and to do specific repairs on notice (*y*); and (6) to insure against fire, if this is

(*s*) Hasluck *v.* Pedley, 19 Eq. 271; Constable *v.* Constable, 11 C. D. 681.

(*t*) *Re* Cline's Estate, 18 Eq. 213. But see Jones *v.* Ogle, 8 Ch. 192.

(*u*) Capron *v.* Capron, 17 Eq. 288; Hasluck *v.* Pedley, *ubi supra*.

The term "dividends" includes bonuses, &c., payable out of revenues of public companies, but not private partnerships.

Under the 5th section of the Act the term "dividends" includes all payments made by the name of dividend, bonus, or otherwise out of the revenue of trading or other public companies. But this definition does not extend to the dividends and income of a *private* partnership. Jones *v.* Ogle, 8 Ch. 192. See *In re* Griffith, 12 C. D. 655, as to what is a public company as distinguished from a private partnership.

(*x*) Swansea Bank *v.* Thomas, 4 Ex. D. 94. If the assignor is the original lessee, the whole rent could be recovered against him under the covenant.

(*y*) Blakesley *v.* Whieldon, 1 Hare, 176. It is doubtful whether, in the absence of stipulation, a covenant to do specific repairs after notice could be insisted on.

intended and stipulated for. If the lease is of a farm, there are generally covenants as to cultivation. Other covenants are often stipulated for, but cannot be insisted on upon an open contract. These will be considered in a subsequent section.

Rates and Taxes.

A covenant by the lessee to pay "all rates, taxes, and assessments payable for or in respect of the demised premises," without any exception, includes not only ordinary rates payable by the tenant, but also taxes and assessments imposed by Parliament, and which, in the absence of agreement, a tenant is allowed to deduct from his rent, *e.g.*, sewers rate and land tax (*z*). The property or income-tax is, however, an exception, as it is provided by the Act imposing it that the tenant is to deduct it from the rent, and that no contract, covenant, or agreement between landlord and tenant or any other persons touching the payment of taxes and assessments to be charged on their respective premises shall be deemed to extend to property or income-tax, nor be binding contrary to the true intent and meaning of the Act (*a*).

General covenant to pay rates and taxes without exception, includes sewers rate and land tax, but not the landlord's property tax.

Tithe rent-charge is not a tax or assessment, and is therefore not included in a general covenant by the lessee to pay rates, taxes, and assessments (*b*).

Nor tithe rent-charge.

Nor does a covenant in the above form apply to charges thrown by an Act of Parliament on the owner, although as an additional security power is given to levy it against the tenant, *e.g.*, the expense of paving and sewering a street or abating a nuisance under a local Act (*c*). But if the terms of the covenant are to

Nor charges thrown by Act of Parliament on the owner; but *secus*, if the covenant extends in terms to all assessments and charges im-

(*z*) Amfield *v.* White, 1 Ry. & Mo. 246; Brewster *v.* Kidgell, 12 Mod. 166; Bradbury *v.* Wright, Dougl. 624.

(*a*) 5 & 6 Vict. c. 35, s. 60, sch. A. No. 4, rule 9. See also sect. 73.

(*b*) Jeffrey *v.* Neale, L. R. 6 C. P. 240. But see Parish *v.* Sleeman, 1 D. F. & J. 326, where tithe rent-charge was held an "outgoing," the agreement being to pay the rent "free of outgoings."

(*c*) Tidswell *v.* Whitworth, L. R. 2 C. P. 326; Rawlins *v.* Briggs, 3 C. P. D. 368; Allum *v.* Dickinson, 9 Q. B. D. 632; Wilkinson *v.* Collyer, 13 Q. B. D. 1.

posed on the landlord in respect of the premises.

pay all taxes, assessments, &c., imposed *on the landlord* or tenant in respect of the premises, charges of this kind are within the covenant (*d*).

The preservation, repair, and insurance of the demised property.

Tenant liable for actual waste

Every tenant for a term of years, or from year to year or at will, is liable at law for actual waste, *e. g.*, pulling down houses or walls, cutting timber, cutting fruit-trees in a garden or orchard, opening mines, altering the nature of the property by converting meadow into arable, &c. (*e*). But no action for waste will lie unless there is injury to the inheritance in one of the following ways, viz., by diminishing the value of the estate, or increasing the burden on it, or destroying identity and thus impairing the evidence of title (*f*). Thus it is not waste to erect new buildings whereby the value of the estate is increased (*g*), or to pull down a ruinous barn without rebuilding it, if the estate is not injured thereby (*h*).

if there is any injury to the inheritance.

Action may be brought by reversioner.

An act of waste by a tenant is a present injury to the reversion, for which the lessor may bring an action during the term (*i*).

Liability of tenant for life or for years, or at will, or from year to year, as to repairs.

It is apprehended that, in the absence of express covenant, a lessee for life (*k*), or for a term of years, is liable under the Statute of Gloucester (*l*) for permissive waste, *i. e.*, for allowing the property to fall into decay for want of necessary repairs (*m*); but the

(*d*) Thompson *v.* Lapworth, 3 C. P. 149; Hartley *v.* Hudson, 4 C. P. D. 367; Budd *v.* Marshall, 5 C. P. D. 481; Aldridge *v.* Ferne, 17 Q. B. D. 212.

(*e*) Co. Litt. 53 *a*.

(*f*) Doe d. Grubb *v.* Burlington, 5 B. & Ad. 507. The head of destroying identity has been brought within very narrow limits in modern times. See Doherty *v.* Allman, 3 App. Cas. 735.

(*g*) Jones *v.* Chappell, 20 Eq. 539.

(*h*) Doe d. Grubb *v.* Burlington, *ubi supra*.

(*i*) Queen's Coll. Oxford *v.* Hallett, 14 East, 489; Corporation of London *v.* Hedger, 18 Ves. 355.

(*k*) As between a tenant for life and remainderman, a court of equity cannot interfere against the former for permissive waste. Powys *v.* Blagrave, 4 D. M. & G. 458; *In re* Courtier, 34 C. D. 136.

(*l*) 6 Edw. 1, c. 5.

(*m*) In some cases doubt has been thrown on this. See Herne *v.* Ben-

question is of little practical importance, as a covenant by the lessee to do repairs is an ordinary part of a lease, and can be insisted on under an open contract. A tenant at will is not liable for permissive waste (*n*). A tenant from year to year (who occupies an intermediate position) is bound, it has been said, to keep the premises wind and water tight, but not to do substantial repairs, such as new roofing (*o*).

Construction of covenants to repair.

Under a general covenant by a lessee to keep the premises in good repair and to deliver them up in good repair and condition at the end of the term, it is not sufficient to keep them in the same state of repair as they were in at the commencement, if they were then in bad repair. The class and description of the house may, however, be taken into account, viz., whether it is an old or a new one, and it must be kept and delivered up in good repair with reference to the class to which it belongs (*p*). And in a recent case "good tenantable repair" was defined by the Court as meaning such repair as having regard to the age, character, and locality of the house would make it reasonably fit for the occupation of a tenant of the class who would be likely to take it (*q*).

Measure of damages on breach of covenant to repair.

Where an action is brought during the continuance of the term upon the covenant to repair, the measure of damages is the diminution in the selling value of the reversion by reason of the non-repair (*r*); and if an action is brought at the end of the term on the covenant to deliver up in repair, the measure of damages is the sum which it will take to put the

bow, 4 Taunt. 764. But in others the liability is clearly laid down. See Cheetham *v.* Hampson, 4 T. R. 319; Gregory *v.* Mighell, 18 Ves. 328; Yellowly *v.* Gower, 24 L. J. Ex. 289. See also Woodhouse *v.* Walker, 5 Q. B. D. 404; Davis *v.* Davis, 38 C. D. 499.

(*n*) Lady Shrewsbury's case, 5 Co. 13 *b*; Harnett *v.* Maitland, 16 L. J. Ex. 134.

(*o*) Ferguson *v.* ——, 2 Esp. 590; Amworth *v.* Thomas, 5 Car. & P. 239; Leach *v.* Thomas, 7 *ib.* 327.

(*p*) Gutteridge *v.* Munyard, 1 M. & Rob. 334; Stanley *v.* Towgood, 3 Bing. N. C. 4; 6 L. J. (N. S.) C. P. 129; Brown *v.* Trumper, 26 Beav. 11; Payne *v.* Haine, 16 M. & W. 541; 16 L. J. Ex. 130; Easton *v.* Pratt, 33 L. J. Ex. 233.

(*q*) Proudfoot *v.* Hart, 25 Q. B. D. 42.

(*r*) Whitham *v.* Kershaw, 16 Q. B. D. 613.

premises in the state of repair in which the tenant ought to have left them (*s*).

No warranty by landlord as to condition of unfurnished house.

A tenant who is under no obligation to do repairs cannot require the landlord to do them, nor is it any defence to an action by the landlord for rent, that the house is uninhabitable for want of substantial repairs (*t*), or by reason of its being infested with noxious insects, or for any other reason, there being no implied condition in a demise of an unfurnished fabric of a house that it is in a reasonably fit state and condition for habitation (*u*). But a different rule applies to a *furnished* house, in which case there is an implied condition that it is fit for occupation, and that the tenant may rescind the contract on the ground that it is infested by bugs, or unwholesome for want of proper drainage (*x*).

Secus, when house is let furnished.

Liability of tenant in case of fire.

As regards destruction by fire, it is provided by the statute 14 Geo. 3, c. 78, s. 86, that no action, suit, or process shall be had or prosecuted against any person in whose house or building or on whose estate any fire shall *accidentally* begin, or any recompense be made by such person for any damage suffered or occasioned thereby; but agreements between landlord and tenant are excepted. In the absence, therefore, of any special stipulation, the lessee is not bound to rebuild a house accidentally burnt down, but if he enters into a general covenant to repair, without any exception, he is liable to restore any house or buildings which may be destroyed by fire, tempest, lightning, or any other accident (*y*). It should be borne in mind also that a fire caused by negligence has been held not to be accidental within the meaning of the above enactment (*z*).

In absence of stipulation, lessee not bound to rebuild in case of fire, but he must do so under general covenant to repair.

(*s*) Morgan *v.* Hardy, 17 Q. B. D. 770.

(*t*) Arden *v.* Pullen, 10 M. & W. 321; 11 L. J. (N. S.) Ex. 359; Gott *v.* Gandy, 23 L. J. Q. B. 1.

(*u*) Hart *v.* Windsor, 12 M. & W. 61.

(*x*) Smith *v.* Marrable, 11 M. & W. 5; Wilson *v.* Finch Hatton, 2 Ex. D. 336.

(*y*) 2 Saund. Rep. by Williams, 422, n.; Pym *v.* Blackburn, 3 Ves. 34.

(*z*) Filliter *v.* Phippard, 11 Q. B. 347; 17 L. J. Q. B. 89.

In absence of stipulation, lessee liable to rent although house has been burnt down.

Where there is no obligation on either party to insure, the lessee remains liable for his rent although the house has been burnt down (*a*); and it has been held that he has no equity to compel the lessor to expend the money received from an insurance office in rebuilding (*b*). But these decisions must be taken in connection with sect. 83 of 14 Geo. 3, c. 78, which authorizes and requires directors of insurance offices, on the request of *any person interested* in or entitled unto any houses or buildings which may be burnt down or damaged by fire, to cause the insurance money to be laid out in rebuilding (*c*). It would seem, therefore, that if in the above-mentioned cases the lessee had required the directors of the insurance company, before they paid over the money to the lessor, to apply it in rebuilding, they would have been bound to do so (*d*).

Proper form of covenant by lessee for insurance.

It follows from the foregoing observations that a lease should expressly provide for insurance. If it is arranged that the lessee shall insure, the covenant should state in whose name the insurance is to be. It should also name the office, or provide that the office shall be one approved by the lessor, and the lessee should be bound to produce the policy and the receipts for the premiums.

Construction of covenant.

It has been held that a covenant to insure in the joint names of the lessor and lessee is substantially performed if the insurance is in the name of the lessor only (*e*); but a covenant to insure in the name of the lessor is broken by the lessee adding his own name (*f*).

Covenants to insure in underlease.

In the case of an underlease where the sub-lessor is himself bound to insure, the covenant in the under-

(*a*) Belfour *v.* Weston, 1 T. R. 310; Holzapffell *v.* Baker, 18 Ves. 115.

(*b*) Leeds *v.* Cheetham, 1 Sim. 146; Loft *v.* Dennis, 28 L. J. Q. B. 169. The case of Steele *v.* Right, cited in 1 T. R. 708, and the dictum in Brown *v.* Quilter, Amb. 619, contrary to the statement in the text, must be considered to be overruled.

(*c*) It has been held that this provision is a general enactment, and not limited in its operation to the metropolitan districts. *Ex parte* Goreley, 34 L. J. Bankruptcy, 1.

(*d*) Simpson *v.* Scottish, &c. Co., 23 L. J. Ch. 329.

(*e*) Havens *v.* Middleton, 10 Hare, 641.

(*f*) Penniall *v.* Harborne, 11 Q. B. 368.

lease, if entered into by the under-lessee, should of course be made to correspond with that in the superior lease. Sometimes the arrangement is that the under-lessor shall continue to insure as required by the superior lease, and an additional rent is reserved equal in amount to the annual premium.

Where lessee does not insure, damage by fire should be excepted from general covenant to repair.

If it is not intended that the lessee shall insure, the covenant by him to repair should except accidents by fire, and of course, if it is intended that any of the repairs should be done by the lessor, this should be expressly provided for.

Covenants in farm leases.

In farm leases, covenants as to cultivation are usually inserted with the object of preventing the land from being impoverished, or the farm otherwise deteriorated by bad or negligent farming.

IV. *Covenants restrictive of the use of the demised property and covenants against assignment or underletting without the lessor's consent.*

Covenant not to carry on trades, or to use premises as a private dwelling-house.

A lease of a house often provides that the lessee shall not carry on particular trades on the premises. A covenant that the premises shall be used as a private dwelling-house only, is broken by permitting the house to be used as a school (*g*) or charitable institution for the board and education of children (*h*).

Not to do act which may be an annoyance to neighbours.

A covenant "not to do any act which may be or grow to the annoyance, &c., of the lessor or the inhabitants of the neighbouring houses" is broken by the establishment of a hospital for diseases which may not unreasonably cause some apprehension of risk to the neighbours (*i*).

Not to use premises as a beer-house, &c.

A covenant prohibiting the use of premises as a public-house, or a beer-house, is not broken by the sale of beer, in retail, to be drunk off the premises, the terms "public-house" and "beer-house" having

(*g*) Wickenden *v.* Webster, 25 L. J. Q. B. 264.
(*h*) German *v.* Chapman, 7 C. D. 271.
(*i*) Todheatley *v.* Benham, 40 C. D. 80.

acquired a technical sense (*k*); but if the term "beer-shop" is used, a sale to be drunk off the premises is a breach of the covenant (*l*): and it has been decided that for a grocer to sell wine or spirits in bottles is a breach of covenant "not to use premises for the sale of spirituous liquors" (*m*), but is permitted under a covenant "not to carry on the trade of a seller of wine and spirituous liquors" (*n*).

Covenant not to assign or underlet, without lessor's consent.

Construction of such a covenant.

A lease frequently contains a covenant not to assign or underlet without the lessor's consent. It is generally considered that such a covenant does not prevent a bequest by will (*o*). Nor does it extend to a deposit of a lease by way of security (*p*), nor to an alienation by operation of law, *e. g.*, by bankruptcy or by judgment, even where the judgment is preceded by a warrant of attorney given by the debtor (*q*), and a trustee in bankruptcy having become entitled by operation of law may afterwards sell and assign in the discharge of his duty without its being a breach of the covenant (*r*). But in a case where the power of re-entry was exerciseable in the event of the lessee becoming bankrupt, and the assignees in bankruptcy remained in possession and paid rent, it was held that they must be considered as coming in, not by operation of law, but by agreement with the lessor, and that they were therefore bound by a covenant not to assign without consent (*s*). The executor or administrator of a lessee is bound by the covenant, if expressly mentioned in it (*t*).

(*k*) Pearse *v.* Coats, L. R. 2 Eq. 688; London and North Western Railway Compy. *v.* Garnett, *ib.* 9 Eq. 26; Holt *v.* Collyer, 16 C. D. 718; Nicoll *v.* Fleming, 19 C. D. 258.

(*l*) Bishop of St. Albans *v.* Battersby, 3 Q. B. D. 359; London, &c. Compy. *v.* Field, 16 C. D. 645.

(*m*) Fielden *v.* Slater, L. R. 7 Eq. 523.

(*n*) Jones *v.* Bone, L. R. 9 Eq. 674.

(*o*) Fox *v.* Swann, Sty. 482; Doe d. Bevan, 3 M. & S. 353. The dicta to the contrary in the earlier cases, Knight *v.* Mory, Cro. Eliz. 60; Bury *v.* Stanton, *ib.* 330, must be deemed overruled.

(*p*) Doe d. Pitt *v.* Hogg, 4 D. & Ry. 226.

(*q*) Doe d. Curtis, 8 T. R. 57; Croft *v.* Lumley, 5 El. & Bl. 682; 25 L. J. Q. B. 223.

(*r*) Goring *v.* Warner, 2 Eq. Ab. 100; Doe d. Bevan, 3 M. & S. 353.

(*s*) Dyke *v.* Taylor, 2 Giff. 570.

(*t*) Roe d. Gresson *v.* Harrison, 2 T. R. 425.

Underlease not a breach of covenant against assignment.

An underlease is not a breach of a covenant not to assign (*u*); but a covenant "not to let, set, or demise for all or any part of the term" has been held to prohibit an assignment (*x*). An assignment by one of two joint tenants to the other is a breach of such a covenant (*y*).

Assignment by one joint tenant to the other.

Covenant not to assign, &c., cannot be insisted on under an open contract.

A covenant not to assign without consent, though common, is not an usual and proper one in the sense that it can be insisted on under an open contract (*z*). And, indeed, considering how a covenant of this kind can be made an instrument of oppression in the hands of an unscrupulous landlord, it is surprising that its insertion without qualification is so readily assented to. Its legitimate object is to secure a responsible tenant, and it is therefore reasonable to insist on some qualifying words being added, confining its operation to this end. Sometimes this is done by adding "such consent not to be unreasonably or vexatiously withheld," or "such consent not to be withheld if the proposed assignee is a responsible and respectable person." If words of this kind are added, they do not amount to a covenant by the lessor, but if he refuses his consent improperly the lessee may assign without it (*a*).

May be qualified.

A covenant not to assign without consent will, unless the lease contains an expressed provision to the contrary, be deemed to be subject to a proviso to the effect that no fine or sum of money in the nature of a fine shall be payable for or in respect of such consent, but this does not preclude the right to require the payment of a reasonable sum in respect of any legal or other expense incurred in relation to such consent (*b*).

Runs with the land,

A covenant not to assign without consent should be

(*u*) Crusoe d. Blencowe *v.* Bugby, 2 Wm. Bl. 766.

(*x*) Greenaway *v.* Adams, 12 Ves. 395.

(*y*) Varley *v.* Coppard, L. R. 7 C. P. 505. See also Corp. of Bristol *v.* Westcott, L. R. 12 C. D. 461.

(*z*) Henderson *v.* Hay, 3 B. C. C. 632; Church *v.* Brown, 15 Ves. 258; Buckland *v.* Papillon, L. R. 1 Eq. 477; Hodgkinson *v.* Crowe, L. R. 19 Eq. 591; Hampshire *v.* Wickens, *ib.* 7 C. D. 555; *In re* Lander and Bagley, (1892) 3 Ch. 41.

(*a*) Treloar *v.* Bigge, L. R. 9 Exch. 151; Evans *v.* Davis, 10 C. D. 747; Sears *v.* House Property, &c. Socy., 16 C. D. 387.

(*b*) Conv. Act, 1892 (55 & 56 Vict. c. 13), s. 3.

so worded as to make it clear that the executors, administrators and assigns of the lessee are intended to be bound by it, in which case it will run with the land so as to bind an assignee at law (*c*).

Measure of damages on breach of covenant.

The measure of damages in an action for breach of the covenant is such a sum of money as will put the plaintiff in the same position as if he had still the defendant's liability instead of the liability of one of inferior pecuniary means for past and future breaches (*d*).

V. *The condition of re-entry, and the relief provided by statute against a forfeiture thereunder.*

Proviso for re-entry.

The lessee's covenants are usually followed by a proviso or condition enabling the lessor to re-enter in case the rent remains unpaid for a certain time, or in case of a breach of the lessee's covenants, but such a condition could not be insisted on in the absence of stipulation (*e*).

Cannot be insisted on under open contract.

Demand of rent necessary at common law.

Before a landlord could re-enter for non-payment of rent, he was, by the common law, obliged to make an actual demand, and in making such demand a number of troublesome formalities were necessary (*f*). By the Common Law Procedure Act, 1852, sect. 210 (*g*), the service of a writ of ejectment is substituted for an actual demand and re-entry; but a lessor cannot recover under this statute without showing that a half-year's rent was due before the writ was served, and that no sufficient distress could be found on the premises (*h*). It is usual to provide in the condition for re-entry that the lessor may re-enter for non-payment of rent, whether the same shall have been legally demanded or not. Words to that effect will dispense with the necessity of making a legal demand, or of

(*c*) Williams *v.* Earle, L. R. 3 Q. B. 739.
(*d*) Williams *v.* Earle, *ubi supra*.
(*e*) Hodgkinson *v.* Crowe, L. R. 10 Ch. 622.
(*f*) See 1 Saund. 287, n. 16.
(*g*) This section seems to be substituted for sect. 2 of 4 Geo. 2, c. 28.
(*h*) See Doe d. Foster *v.* Wandlass, 7 T. R. 117.

proving that no sufficient distress can be found (*i*). If the lease or agreement expressly requires that the rent shall be demanded before a re-entry, the demand need not be accompanied by the Common Law formalities (*k*), but it must not be made until the expiration of the time allowed for payment (*l*).

Forfeiture waived by acceptance of rent with notice.

A forfeiture, whether for non-payment of rent or for a breach of covenant, will be waived by a subsequent acceptance of rent, provided that the lessor at the time of such acceptance have notice of the forfeiture; and a distress or action for rent which has accrued subsequently to the breach constituting the forfeiture is a waiver (*m*). The acceptance of rent is, however, no waiver of forfeiture in respect of subsequent acts or omissions in breach of the same covenant.

Equity will relieve against forfeiture for non-payment of rent.

It has been long settled that equity will relieve against a forfeiture for non-payment of rent (*n*). By the Common Law Procedure Act, 1852 (*o*), a tenant may stay all further proceedings against him by paying the arrears of rent and costs to the landlord or into Court; and by the same Act it is provided that a lessee against whom judgment and execution have been had in action of ejectment for non-payment of rent must proceed for relief in equity within six months after execution; and in case he proceeds in equity within that time, he must, in order to have or continue an injunction against the proceedings at law, bring into Court the arrears of rent and the amount of the taxed costs at law within forty days after the lessor's answer (*p*).

Formerly Court had no jurisdiction to relieve against forfeiture for breaches of covenant.

Until recently, the Court had no jurisdiction to relieve the lessee from the consequences of a breach of the covenants other than the covenant for non-payment of rent. But such a jurisdiction has now been

(*i*) Doe d. Harris *v.* Masters, 2 B. & C. 490.

(*k*) Doe d. Schofield *v.* Alexander, 2 M. & S. 525.

(*l*) Phillips *v.* Bridge, L. R. 9 C. P. 48.

(*m*) Dendy *v.* Nichol, 27 L. J. C. P. 220; Cotesworth *v.* Spokes, 30 L. J. C. P. 220.

(*n*) Wadman *v.* Calcraft, 10 Ves. 67.

(*o*) Sects. 210. 211.

(*p*) There is a similar provision in 4 Geo. 2, c. 28, s. 2. See Bowser *v.* Colby, 1 Hare, 109.

conferred by section 14 of the Conveyancing Act, 1881, which provides as follows:— Jurisdiction conferred by recent Act.

(1.) A right of re-entry or forfeiture under any proviso or stipulation in a lease for a breach of any covenant or condition in the lease, shall not be enforceable, by action or otherwise, unless and until the lessor serves on the lessee a notice specifying the particular breach complained of, and, if the breach is capable of remedy, requiring the lessee to remedy the breach, and in any case requiring him to make compensation in money for the breach, and the lessee fails, within a reasonable time thereafter, to remedy the breach, if it is capable of remedy, and to make reasonable compensation in money to the satisfaction of the lessor for the breach. Restrictions on and relief against forfeiture of leases.

(2.) Where a lessor is proceeding, by action or otherwise, to enforce such a right of re-entry or forfeiture, the lessee may in the lessor's action, if any, or in any action brought by himself, apply to the Court for relief; and the Court may grant or refuse relief, as the Court, having regard to the proceedings and conduct of the parties under the foregoing provisions of this section, and to all the other circumstances, thinks fit; and in case of relief may grant it on such terms, if any, as to costs, expenses, damages, compensation, penalty, or otherwise, including the granting of an injunction to restrain any like breach in the future, as the Court, in the circumstances of each case, thinks fit. Lessee may apply to Court for relief.

(3.) For the purposes of this section a lease includes an original or derivative under-lease, also a grant at a fee farm rent, or securing a rent by condition; and a lessee includes an original or derivative under-lessee, and the executors, administrators and assigns of a lessee, also a grantee under such a grant as aforesaid, his heirs and assigns; and a lessor includes an original or derivative under-lessor, and the heirs, executors, administrators and assigns of a lessor, also a grantor as aforesaid, and his heirs and assigns. Definition of term "lease."

(4.) This section applies although the proviso or stipulation under which the right of re-entry or forfeiture accrues is inserted in the lease in pursuance of the directions of any Act of Parliament.

(5.) For the purposes of this section a lease limited to continue so long only as the lessee abstains from committing a breach of covenant shall be and take effect as a lease to continue for any longer term for which it could subsist, but determinable by a proviso for re-entry on such breach.

Exceptions.

(6.) This section does not extend—

(i.) To a covenant or condition against the assigning, underletting, parting with the possession, or disposing of the land leased; or to a condition for forfeiture on the bankruptcy of the lessee, or on the taking in execution of the lessee's interest; or

(ii.) In case of a mining lease, to a covenant or condition for allowing the lessor to have access to or inspect books, accounts, records, weighing machines, or other things, or to enter or inspect the mine or the workings thereof.

(8.) This section shall not affect the law relating to re-entry or forfeiture or relief in case of non-payment of rent.

(9.) This section applies to leases made either before or after the commencement of this Act, and shall have effect notwithstanding any stipulation to the contrary.

Section 14 of the Act of 1881 is amended by sections 2, 4, and 5 of the Conveyancing Act, 1892 (*h*), as follows:—

Costs of waiver, and forfeiture in case of bankruptcy or execution.

Sect. 2.—(1.) A lessor shall be entitled to recover as a debt due to him from a lessee, and in addition to damages (if any) all reasonable costs and expenses properly incurred by the lessor in the employment of a solicitor and surveyor or valuer, or otherwise, in reference to any breach giving rise to a right of re-entry or forfeiture which, at the request of the lessee, is waived by the lessor by writing under his hand, or from which the lessee is relieved, under the provisions of the Conveyancing and Law of Property Act, 1881, or of this Act (*i*).

(*h*) 55 & 56 Vict. c. 13.

(*i*) In Skinners' Company *v.* Bright, (1892) 2 Q. B. 543, it had been held that under sect. 14 of the Act of 1881, a lessor could not recover as "compensation" the cost incurred by him in consulting and employing a solicitor and surveyor in respect of the preparation of the notice under the section.

(2.) Sub-section six of section fourteen of the Conveyancing and Law of Property Act, 1881, is to apply to a condition for forfeiture on bankruptcy of the lessee, or on taking in execution of the lessee's interest only after the expiration of one year from the date of the bankruptcy, or taking in execution, and provided the lessee's interest be not sold within such one year, but in case the lessee's interest be sold within such one year, sub-section six shall cease to be applicable thereto.

(3.) Sub-section two of this section is not to apply to any lease of—

(a.) Agricultural or pastoral land:

(b.) Mines or minerals:

(c.) A house used or intended to be used as a public-house or beershop:

(d.) A house let as a dwelling-house, with the use of any furniture, books, works of art, or other chattels not being in the nature of fixtures:

(e.) Any property with respect to which the personal qualifications of the tenant are of importance for the preservation of the value or character of the property, or on the ground of neighbourhood to the lessor, or to any person holding under him.

Power of Court to protect under-lessees on forfeiture of superior leases.

Sect. 4. Where a lessor is proceeding by action or otherwise to enforce a right of re-entry or forfeiture under any covenant, proviso, or stipulation in a lease, the Court may, on application by any person claiming as under-lessee any estate or interest in the property comprised in the lease or any part thereof either in the lessor's action (if any) or in any action brought by such person for that purpose, make an order vesting for the whole term of the lease or any less term the property comprised in the lease or any part thereof in any person entitled as under-lessee to any estate or interest in such property upon such conditions, as to execution of any deed or other document, payment of rent, costs, expenses, damages, compensation, giving security, or otherwise, as the Court in the circumstances of each case shall think fit, but in no case shall any such under-lessee be entitled to require a lease to be granted to him for any longer term than he had under his original sub-lease.

Extension of definitions of "lease," "under-lease," and "under-lessee."

Sect. 5. In section fourteen of the Conveyancing and Law of Property Act, 1881, as amended by this Act, and in this Act, "lease" shall also include an agreement for a lease where the lessee has become entitled to have his lease granted, and "under-lease" shall also include an agreement for an under-lease where the under-lessee has become entitled to have his under-lease granted, and in this Act "under-lessee" shall include any person deriving title under or from an under-lessee.

VI. *The effect of alienation by the lessor or lessee as regards the rent and the covenants and conditions of the lease.*

Rent follows reversion, and is apportionable on a partial alienation.

A rent reserved on a lease is by common law incident to the reversion and passes with it on every devolution or alienation. And if the reversion of part of the land comprised in the lease is aliened, the rent is apportionable at common law (*k*).

Benefit of and liability under covenants and conditions made to pass with reversion by statute.

The benefit of and obligation under the covenants and conditions in a lease did not, however, pass at common law to a grantee of the reversion. This is remedied by the stat. 32 Hen. 8, c. 34, which provides that "all grantees of reversions shall enjoy all advantages, benefits and remedies by action for non-performance of conditions, covenants, or agreements contained or expressed in indentures of lease, which the grantors or lessors themselves had or enjoyed," and also gives a right of action to the lessee against grantees of the reversion.

It has been held that under this Act the assignee of the reversion of part of the demised property may sue the lessee on the covenants in the lease to repair or to pay rent, and in the latter case the rent will be apportioned by the Court or a jury (*l*).

On alienation of reversion of part of de-

The stat. 22 & 23 Vict. c. 35 (*m*), gives to the assignee of the reversion of part of the lands com-

(*k*) Co. Lit. 148 *a*.

(*l*) Twynam *v.* Pickard, 2 B. & Ald. 105; Mayor of Swansea *v.* Thomas, 10 Q. B. D. 48.

(*m*) Sect. 35.

prised in a lease, where the rent has been legally apportioned, the benefit of all conditions and powers of re-entry for non-payment of the rent in like manner as if such conditions or powers had been reserved to him in respect of such apportioned rent.

mised land, condition of re-entry for non-payment of rent is available for apportioned part.

The last-mentioned enactment applied to the rent only. If the reversion was severed, the right of re-entry on breach of covenants could not be enforced by the grantee of part (*n*), unless the grant of part was to the lessee himself so as to cause an extinguishment, in which case the right of re-entry remained intact over that part which remained in the lessor (*o*).

But until recent Act condition was gone, as regards breach of covenants, except where lessee himself was alienee.

The Conveyancing Act, 1881, contains the following provisions, applicable only to leases made after the 31st December, 1881 :—

Sect. 10. Rent reserved by a lease and the benefit of every covenant or provision therein contained having reference to the subject-matter thereof, and on the lessee's part to be observed or performed, and every condition of re-entry and other condition therein contained, shall be annexed and incident to and shall go with the reversionary estate in the land or in any part thereof immediately expectant on the term granted by the lease, notwithstanding severance of that reversionary estate, and shall be capable of being recovered, received, enforced and taken advantage of by the person from time to time entitled, subject to the term, to the income of the whole or any part, as the case may require, of the land leased.

Rent and benefit of lessee's covenants and condition of re-entry to run with reversion.

Sect. 11. The obligation of a covenant entered into by a lessor with reference to the subject-matter of the lease shall, if and as far as the lessor has power to bind the reversionary estate immediately expectant on the term granted by the lease, be annexed and incident to and shall go with that reversionary estate, or the several parts thereof, notwithstanding severance of that reversionary estate, and may be taken advantage of and enforced by the person in whom the term is from time to time vested by conveyance, devolution in law, or otherwise; and, if and as far as the lessor has

Obligation of lessor's covenants to run with reversion.

(*n*) Knight's case, 5 Co. 54 *b*. (*o*) Hyde *v.* Warden, 3 Ex. D. 72.

power to make the lease binding against the person from time to time entitled to that reversionary estate, the obligation aforesaid may be taken advantage of and enforced against any person so entitled.

Apportionment of conditions on severance, &c.

Sect. 12. Notwithstanding the severance by conveyance, surrender, or otherwise, of the reversionary estate in any land comprised in a lease, and notwithstanding the avoidance or cesser in any other manner of the term granted by a lease as to part only of the land comprised therein, every condition or right of re-entry, and every other condition, contained in the lease, shall be apportioned, and shall remain annexed to the severed parts of the reversionary estate as severed, and shall be in force with respect to the term whereon each severed part is reversionary, or the term in any land which has not been surrendered, or as to which the term has not been avoided or has not otherwise ceased, in like manner as if the land comprised in each severed part, or the land as to which the term remains subsisting, as the case may be, had alone originally been comprised in the lease.

Dumpor's Case.

Law established by *Dumpor's Case* altered by 22 & 23 Vict. c. 35.

It was formerly a rule of law that if a condition was once dispensed with it was gone for ever. As a consequence of this principle, it was held in *Dumpor's Case* (*p*), that a condition not to alien without licence was determined by the first licence given. This doctrine is now abolished by the Act 22 & 23 Vict. c. 35, which provides in effect that a licence to do any particular act which, without such licence, would create a forfeiture, shall extend only to that act, and that a licence to one of several co-lessees shall not destroy the condition as against the other co-lessees, and that a licence to assign, &c., part of the property shall not destroy the condition as to the rest of the property (*q*).

Mortgagor in possession may sue for rent.

A conveyance of the reversion by way of mortgage of course passes to the mortgagee the right to the rent and the benefit of all covenants and conditions. But as it is usual for the mortgagee to permit the

(*p*) 4 Co. Rep. 119 *b*. (*q*) Sects. 1, 2.

mortgagor to remain in possession, the Judicature Act, 1873 (*r*), provides that a mortgagor entitled for the time being to the possession or receipt of the rents and profits of any land as to which no notice of his intention to take possession or to enter into the receipt of the rents and profits thereof shall have been given by the mortgagee, may sue for such possession, or for the recovery of such rents or profits, or to prevent or recover damages in respect of any trespass or other wrong relative thereto in his own name only, unless the cause of action arises upon a lease or other contract made by him jointly with any other person.

Whether lessor can assign right of entry already accrued.

It seems doubtful whether under the stat. 8 & 9 Vict. c. 106, s. 5, a lessor can pass to his assignee the right to enter for a breach already committed of the lessee's covenants: at all events, such a right will not pass by the assignment of the reversion, unless expressly mentioned (*s*).

Effect of destruction of mesne reversion.

As the right to the rent and to sue on the covenants follows the reversion, it was formerly important, where a lease was made by a person who was himself only a termor, or had otherwise a limited interest, that the term or other interest constituting his reversion should not be merged or surrendered. For example, if lands were held by A. for life or for years, with remainder to B., and A. made a lease and afterwards surrendered his estate to B. or took a conveyance from B. which had the effect of merging his (A.'s) estate, the consequence was that, the immediate reversion on the lease being gone, the rent and the benefit of the covenants were gone also. To remedy this, it is provided by 8 & 9 Vict. c. 106, s. 9, that in case of the merger or surrender of the reversion expectant on a lease, the estate conferring, as against the tenant under the same lease, the next vested right to the same hereditament, shall for the purpose of preserving the incidents to such extinguished reversion, be deemed the reversion expectant on the lease.

8 & 9 Vict. c. 106, s. 9.

(*r*) Sect. 25, sub-sect. 5.

(*s*) Crane *v.* Batten, 23 L. T. R. 220; Hunt *v.* Remnant, 9 Exch. 635; 23 L. J. Ex. 135.

Original lessee remains liable to covenants after assignment, and may be sued by grantee of reversion.

It will be borne in mind that a lessee who has entered into covenants with his lessor remains liable to those covenants after he has assigned the lease to another, and the right to sue the original lessee in such a case passes to a grantee of the reversion by virtue of 32 Hen. 8, c. 34, where the lease is by deed; but not in the case of a tenancy from year to year created by an instrument not under seal (*t*). It is apprehended, however, that sect 10 of the Conveyancing Act applies to leases by mere writing where the law does not require a deed, *e. g.*, a lease from year to year, as well as to leases by deed.

VII. *By what modes, otherwise than by forfeiture, a tenancy may be determined; and the rights of the parties at the determination thereof, as regards emblements, fixtures, compensation for improvements and other matters.*

Lease for term determines by effluxion of time.

A lease for a term certain of course determines at the expiration of the term, and no notice to quit is necessary.

Notice to quit necessary to determine tenancy from year to year.

It has been before observed that (except in cases within section 33 of the Agricultural Holdings Act, 1883) a tenancy from year to year continues until it is put an end to by a half-year's notice to quit from one of the parties, and that such notice must expire at the period of the year at which the tenancy commenced. And if a tenancy from year to year has arisen from the tenant having held over on the expiration of his lease or original tenancy, the general rule is that the notice must expire at the period of the year at which the original term commenced (*u*). If the tenant dies during the tenancy, his executor or administrator has the same interest in the land as the deceased had, and the same notice to quit is therefore necessary (*x*).

Executors of tenant entitled to notice to quit.

(*t*) Standen *v.* Christmas, 10 Q. B. R. 135; 16 L. J. Q. B. 265; Allcock *v.* Moorhouse, 9 Q. B. D. 367.

(*u*) Doe d. Collins *v.* Weller, 7 T. R. 478; Berry *v.* Lindley, 3 M. & G. 498; Kelly *v.* Patterson, L. R. 9 C. P. 681.

(*x*) Doe d. Shore *v.* Porter, 2 T. R. 13.

A half-year's notice to quit is necessary whether the rent be reserved half-yearly or quarterly (*y*).

Notice to quit *primâ facie* waived by acceptance or demand of rent.

An acceptance of rent due after the expiration of a notice to quit is a *primâ facie* waiver of the notice, as it shows the intention of both parties to continue the tenancy; so, also, if the landlord distrains for or demands the rent, he *primâ facie* affirms the continuance of the tenancy; but the presumption of waiver may be rebutted, and it is a question for the jury, and not for the Court, whether, under the circumstances of the case, the notice has been waived (*z*).

What notice necessary under "Agricultural Holdings Act."

Section 33 of the Agricultural Holdings Act, 1883 (*a*), provides that where a half-year's notice to quit expiring with a year of tenancy is by law necessary and sufficient for the determination of a tenancy from year to year, a year's notice so expiring is to be necessary and sufficient, unless the landlord and tenant, by writing under their hands, agree that the section shall not apply, in which case a half-year's notice shall continue to be sufficient, but the section does not extend to a case where the tenant is adjudged bankrupt, or has filed a petition for composition or arrangement with his creditors. Nor does the section apply to a yearly tenancy which by express agreement of the parties is determinable by six months' notice to quit (*b*).

Tenancy at will, how determined.

A tenancy at will may be determined at any time by the tenant delivering up possession, or by the landlord demanding such possession, and no notice to quit is necessary (*c*).

Tenancy on sufferance, how determined.

A tenant on sufferance is a mere trespasser, and the landlord may at any time enter and put an end to the tenancy without making any previous demand.

Surrender.

Express surrender must be by deed.

A lease or tenancy may be determined by an express surrender, or by a surrender by act and operation of law. An express surrender requires a deed, unless the

(*y*) Spirley *v.* Newman, 1 Esp. 266.

(*z*) Blyth *v.* Bennett, 13 C. B. 178.

(*a*) 46 & 47 Vict. c. 61.

(*b*) Wilkinson *v.* Calvert, 3 C. P. D. 360; Barlow *v.* Teal, 15 Q. B. D. 403.

(*c*) Right d. Lewis *v.* Beard, 13 East, 210.

estate surrendered is one that can be created by parol (*d*).

Surrender at law.

A surrender by act and operation of law arises (1) where the lessee gives up, and the lessor resumes, possession in pursuance of an agreement between the parties that the lease shall come to an end (*e*); or, (2) where a lessee accepts a new lease commencing immediately, or which is otherwise inconsistent with the continuance of the first lease, even though the second lease may be of shorter duration than the first (*f*); or, (3) where a new lease is made to a third party, with the assent of the original tenant, who gives up possession (*g*).

Consent of original tenant to new lease may be implied.

The consent of the original tenant may be implied from the circumstances. Thus, in a case where a bishop's lease had been granted to A., and at the accustomed period a new lease was granted to B., the consent of A. was presumed from the fact that at the time of the renewal B. was in possession of the property and also of the old lease, and that the old lease was, in accordance with the usage at the bishop's office, given up by him to be cancelled (*h*). But it is apprehended that there can be no implied surrender by the original lessee unless he gives up actual possession. If, therefore, A., a lessee, grants an underlease to B., who takes possession, and a new lease is afterwards granted by the superior lessor to C., no evidence of A.'s consent to the new lease will supply the place of a surrender by deed, so as to enable C. to sue B. on the covenants in the underlease (*i*).

Effect of disclaimer by trustee of bankrupt lessee.

By the Bankruptcy Act, 1883 (*k*), the trustee is authorized to disclaim onerous property (*l*) at any time

(*d*) 8 & 9 Vict. c. 106, s. 3.

(*e*) Phené *v.* Popplewell, 31 L. J. C. P. 235.

(*f*) Hughes *v.* Rowbotham, Cr. Eliz. 302.

(*g*) Thomas *v.* Cook, 2 B. & A. 119; Nicholls *v.* Atherstone, 16 L. J. Q. B. 371; Macdonnell *v.* Pope, 9 Hare, 705.

(*h*) Walker *v.* Richardson, 6 L. J. Ex. 229; 2 M. & W. 882; Davison *v.* Gent, 26 L. J. Ex. 122; 1 H. & N. 744.

(*i*) Lyon *v.* Reid, 13 L. J. Ex. 377; 13 M. & W. 285.

(*k*) 46 & 47 Vict. c. 52, s. 55.

(*l*) This is not confined to property divisible among the creditors, but extends to any property, as defined by sect. 168, from which no benefit can accrue to the estate. *In re* Maughan, 14 Q. B. D. 956.

within three months after the first appointment of a trustee (*m*), or if such property shall not have come to the trustee's knowledge within one month after such appointment, then at any time within two months after he first became aware of it. The disclaimer operates to determine as from its date the rights, interests, and liabilities of the bankrupt and his property in or in respect of the property disclaimed, and also discharges the trustee from all personal liability in respect of the property disclaimed as from the date when the property vested in him, but does not, except so far as is necessary for the purpose of releasing the bankrupt and his property and the trustee from liability, affect the rights or liabilities of any other person.

Trustee may not disclaim without leave of Court, except in certain cases.

A trustee may not disclaim a lease without the leave of the Court except in cases prescribed by general rules (*n*), and the Court may impose conditions before or on granting leave. Any person interested may by notice require the trustee to decide whether he will disclaim or not, and if he neglects to give notice whether he disclaims or not for twenty-eight days, or for such extended period as may be allowed by the Court, he cannot disclaim afterwards. The Court may, on application by any person interested or under any liability not discharged by the Act in respect of any disclaimed property, make an order vesting it in any such person or in any trustee for him upon such terms as it thinks fit, but in the case of leasehold property the Court is not to make a vesting order in favour of any underlessee or mortgagee by demise, except upon the terms of making him subject to the same liabilities

Court may vest disclaimed property in any person interested, or under liability in respect of it.

(*m*) The Court can, under sect. 105, sub-s. 4, enlarge the time for disclaimer; but the trustee must show some good reason for the indulgence he asks. *Re* Price, 13 Q. B. D. 466.

(*n*) By the Bankruptcy Rules, 1883, Rule 232, a lease may be disclaimed without leave of the Court where the bankrupt has not sublet or assigned the lease, or created any mortgage or charge thereon, and (a) the rent reserved and real value of the property leased, as ascertained by the property tax assessment, are less than 20*l.* per annum, or (b) the estate is administered under sect. 121 of the Act, or (c) the trustee serves the lessor with notice of his intention to disclaim, and the lessor does not within seven days after the receipt of such notice give notice to the trustee requiring the matter to be brought before the Court.

In what cases a lease may be disclaimed without leave of the Court.

and obligations as the bankrupt was subject to at the date of the bankruptcy petition; and any mortgagee or underlessee declining to accept a vesting order upon such terms is to be excluded from all interest in and security upon the property, and if there is no person claiming under the bankrupt willing to accept a vesting order on those terms, the Court may vest the bankrupt's interest in any person liable to perform the lessee's covenants, discharged from all estates, &c., created by the bankrupt. Any person injured by the operation of a disclaimer may prove as a creditor in the bankruptcy.

It will be seen that the above enactment defines the effect of a disclaimer with more precision than was done by the Act of 1869 (*o*). Its practical operation may be thus stated—(1) When the bankrupt is the original lessee, the lessor will be entitled to distrain, or to prove in the bankruptcy for arrears of rent, and also to prove for breaches of covenant up to the date of the disclaimer, subject as to arrears of rent to the operation of section 42. (2) Where the bankrupt is an assign of the original lessee, the disclaimer will not deprive the lessor of any of his remedies against the original lessee, who will be entitled to prove in the bankruptcy for any money which he may be compelled to pay, and which the bankrupt ought to have paid. He may also apply to the Court for an order vesting the bankrupt's interest in him. (3) Where the bankrupt has mortgaged by demise, or granted an underlease, the Court will give the mortgagee or underlessee the option of taking a vesting order of the bankrupt's interest. If he consents to take it, he will be liable to the rent and lessee's covenants contained in the original lease as from the date of the petition in bankruptcy, and will be freed and discharged from the rent, and covenants (if any) contained in the underlease, whether he will be liable to the same extent as if he had been the original lessee or only to the same extent as if he

When the bankrupt is the original lessee, all remedies of the lessee remain in force until disclaimer.

Where the bankrupt is an assign, remedies of lessor against original lessee remain in force after disclaimer.

The mortgagee by demise or underlessee may have a vesting order; but if he declines, mortgage or underlease will cease.

(*o*) As the cases decided under sect. 23 of the Act of 1869 have no application to the cases which will arise under the new Act, they are not noticed in this edition.

had been an assignee, is doubtful (*p*). If, on the other hand, he declines to take a vesting order, his mortgage or underlease will cease altogether.

A mortgagee cannot avoid liability under sect. 55 by assigning the mortgage to a man of straw as trustee for himself (*q*). Assignment to man of straw.

Sect. 55 does not apply where the trustee in bankruptcy would not be liable to the covenants in the lease either by privity of contract or privity of estate, *e.g.*, where the bankrupt being the lessee has assigned the whole term to a mortgagee (*r*).

The stat. 4 Geo. 2, c. 28, s. 6, enables leases to be renewed without the surrender of any underleases derived out of the old lease, and saves to the lessee under the new lease and to the underlessees the same mutual rights and remedies as if the old lease had been still in existence. Leases may be renewed without surrender of underleases.

By the same stat., s. 1, it is enacted that "if any tenant for life or lives, or years, holds over any lands, &c., after the determination of his estate, after demand made and notice in writing given, for delivering the possession thereof, by the landlord, &c., or his agent thereunto lawfully authorized, such tenant so holding over shall pay to the person so kept out of possession at the rate of double the yearly value of the lands so detained for so long a time as the same shall be detained." And by stat. 11 Geo. 2, c. 19, s. 18, it is enacted that "in case any tenant shall give notice of his intention to quit the premises, and shall not accordingly deliver up the possession thereof at the time in such notice mentioned, the said tenant shall thenceforth pay to the landlord double the rent which he should otherwise have paid." Tenant holding over after demand of possession to pay double annual value of premises. Tenant holding over after expiration of his notice to quit, to pay double rent.

To enable a landlord to recover double value under the 4 Geo. 2, c. 28, the holding over by the tenant must be contumacious. Thus in a recent case A., a tenant of B., after the death of B. accepted a fresh term from his devisee. He afterwards found that the heir of B. disputed the will, and from the circumstances Holding over must be contumacious.

(*p*) *Re* Finley, 21 Q. B. D. 475.
(*q*) *Re* Smith, 25 Q. B. D. 537.
(*r*) *In re* Gee, 24 Q. B. D. 65.

of the case he reasonably and *bonâ fide* believed that the devisee had no title, and that the land belonged to the heir-at-law. A. thereupon refused to pay rent to the devisee, who gave him notice to quit. As A. did not quit at the expiration of the notice, the devisee, who had established her title, brought an action against him for the double value for wilfully holding over. It was held that the action was not maintainable, as to come within the Act the holding over must be with the consciousness on the part of the tenant that he has no right to retain possession (*s*).

What damages may be recovered against tenant holding over.

In a recent case, a landlord, after giving a yearly tenant notice to quit at the end of his year, agreed to let the land to A. from the end of the year, and informed the tenant that he had done so, but the tenant nevertheless held the premises over for another quarter. It was held that the landlord might recover against the tenant as damages the amount of the ordinary damages which he had had to pay in an action brought against him by A. for not giving him possession at the time agreed on and the cost of such action. It was also held that the fact of the landlord having received from the tenant rent for the quarter during which he held over did not preclude him from bringing the action (*t*).

Mode of recovering possession of small tenements after determination of tenancy.

With regard to tenancies for a term not exceeding seven years and at a rent not exceeding £20 a year, the justices in petty sessions have power, if the tenant refuses to deliver up possession after the tenancy has been determined, to issue a warrant directing the constables to enter by force and give possession to the landlord. In order to obtain such a warrant the landlord or his agent must serve a written notice on the tenant of his intention to proceed under the Act, and the notice must be read over and explained to the person served. If the tenant cannot be found, the notice may be posted in some conspicuous part of the premises (*u*).

(*s*) Swinfen *v.* Bacon, 30 L. J. Ex. 33, 368.

(*t*) Bramley *v.* Chesterton, 2 C. B. (N. S.) 592; 27 L. J. C. P. 23.

(*u*) 1 & 2 Vict. c. 74.

Where a lease or tenancy is for an uncertain period, and determines after the crops are sown and before harvest, the tenant is as a general rule entitled to the crops or (as they are usually called) the emblements; but if the lease is for a term certain, the tenant has no such right (in the absence of special custom), for it is his own fault if, under such circumstances, he sows the crops. Emblements.

It is provided by the 14 & 15 Vict. c. 25, s. 1, that where a lease held by a tenant at rack rent shall determine by the death or the cesser of the estate of the landlord entitled for his life, or any other uncertain interest, instead of emblements the tenant shall continue to hold and occupy the lands until the expiration of the then current year of his tenancy, and shall then quit upon the terms of his lease or holding in the same manner as if such lease or tenancy were determined by effluxion of time or other lawful means during the continuance of the landlord's estate; and the succeeding landlord or owner is empowered to receive and recover from the tenant a due proportion of the rent for the period which shall have elapsed from the death or cesser of the estate of the previous landlord or owner. On death of landlord entitled for life, tenancy continues up to end of current year.

The above Act applies to all tenancies in respect of which there may be a claim to emblements (*x*).

The right to emblements is not confined to the case of landlord and tenant. Thus if a tenant in fee dies before harvest, the then growing crops will go to his executors, though if he has devised the land, the devisee will be entitled to the crops as against the executor (*y*). And where the estates of persons having only limited interests determine by their deaths before harvest, the emblements will go to their personal representatives. Law of emblements applies between heir and executors.

The general law as to things annexed to the freehold is that they become part of it and cannot be severed by a tenant without the consent of the land- Fixtures, general law as to.

(*x*) Haines *v.* Welch, L. R. 4 C. P. 91.

(*y*) Cooper *v.* Woolfitt, 2 H. & N. 122; 26 L. J. Ex. 310.

Exception in case of trade and ornamental fixtures.

lord. But an exception to this general rule has long been established in the case of fixtures set up for the purposes of trade (*z*), or for purposes of ornament or convenience; as, for example, marble, or other ornamental chimney-pieces, marble slabs, grates, or stoves, or the like, provided that they can be separated from the freehold without any material injury (*a*).

Agricultural fixtures.

Recent statutes have conferred on tenants of farms special rights with regard to what may be called agricultural fixtures. Thus the Act 14 & 15 Vict. c. 25, sect. 3, provides "that if any tenant of a farm or lands shall, *with the consent in writing of the landlord*, at his own cost and expense, erect any farm-building, either detached or otherwise, or put up any other building, engine, or machinery either for agricultural purposes or for the purposes of trade and agriculture (which shall not have been erected or put up in pursuance of some obligation in that behalf), then all such buildings, engines, and machinery shall be the property of the tenant, and shall be removable by him, notwithstanding the same may consist of separate buildings, or that the same, or any part thereof, may be built in or permanently fixed to the soil, so as the tenant making any such removal do not in anywise injure the land or buildings belonging to the landlord, or otherwise do put the same in like plight and condition, or as good plight and condition as the same were in before the erection of anything so removed." But the tenant is bound before any such removal to give a month's notice to the landlord or his agent, and the landlord may elect to purchase the matters and things proposed to be removed at a valuation.

And the Agricultural Holdings Act, 1883, contains provisions conferring further rights on tenants with regard to fixtures in the case of holdings subject to

(*z*) Poole's case, 1 Salk. 368; Lawton *v.* Lawton, 3 Atk. 13; Dean *v.* Allaby, 3 Esp. 11; Fitzherbert *v.* Shaw, 1 H. Bl. 528.

(*a*) See Buckland *v.* Butterfield, 2 B. & B. 75. See generally on the subject of fixtures, Amos & Ferard on Fixtures; also Elwes *v.* Mawe, 2 Smith, L. C. 99.

that Act, which provisions will be mentioned afterwards in connection with the other provisions of that Act.

Tenant's fixtures, when they must be removed.

As a general rule the tenant must in the absence of any express stipulation on the subject, remove fixtures during the term, otherwise they belong to the landlord (*b*); and this rule equally applies, when the tenancy is determined by the lessor re-entering for a breach of covenant (*c*). If, however, the tenant is allowed to remain in possession after the expiration of the term, it would seem that he may at any time while so remaining in possession remove fixtures which he might have removed during the term (*d*). And in *Weeton* v. *Woodcock* (*e*), the rule was thus stated, that the tenant's right to remove fixtures continues during his original term, and during such further period of possession by him, as he holds the premises under a right still to consider himself a tenant (*f*).

Effect of disclaimer by trustee of bankrupt as regards right to remove fixtures.

Under the Bankruptcy Act, 1869 (*g*), a disclaimer by the trustee operated as a surrender of the lease as from the date of the adjudication, and it was consequently held that a trustee after disclaimer could not remove the fixtures (*h*), and that if he removed them first and disclaimed afterwards, the landlord might recover against him their value (*i*). But under the Bankruptcy Act, 1883, (*k*), a disclaimer by the trustee determines the rights and interests of the bankrupt as from its date only, and will therefore, it is apprehended, not prevent the trustee from removing the fixtures during the interval between the commencement of the bankruptcy and the date of the disclaimer. If the trustee does not remove them before applying for leave to disclaim, the Court will give the landlord

(*b*) Leader *v.* Homewood, 5 C. B. (N. S.) 546; 27 L. J. C. P. 316.
(*c*) Pugh *v.* Arton, L. R. 8 Eq. 626.
(*d*) Penton *v.* Robart, 2 East, 88.
(*e*) 7 M. & W. 14; 10 L. J. Ex. 153.
(*f*) See also Greene *v.* Cole, 2 Wms. Saund. 228; Elwes *v.* Mawe, 2 Smith L. C. 117; Ruffey *v.* Henderson, 21 L. J. Q. B. 49; Wilde *v.* Waters, 24 L. J. C. P. 193.
(*g*) 32 & 33 Vict. c. 71, s. 23.
(*h*) *Ex parte* Stephens, 7 C. D. 127.
(*i*) *Ex parte* Glegg, 19 C. D. 7.
(*k*) 46 & 47 Vict. c. 52, s. 55.

the option of taking them at a valuation; and, if he declines, will allow the trustee a reasonable time within which to remove them (*l*).

Covenants as to fixtures.

Where there is an express covenant as to fixtures, the rights of the parties must of course depend on the terms of the covenant. Thus, if it is provided that a lessee may remove the fixtures at the end of the term, he will be allowed a reasonable time for that purpose (*m*). On the other hand, if a lessee covenants to deliver up to the landlord, at the expiration of the term, fixtures, which, in the absence of such covenant, he might have removed, he thereby deprives himself of the right of removing them. In a case where the lessee covenanted to surrender the premises at the end of the term, "with all locks, keys, bars, bolts, marble and other chimney-pieces, foot paces, slabs, and other fixtures and articles which shall or may at any time during the term be fixed or fastened to the said demised premises or be thereto belonging," it was held that, as the specific articles were all of the nature of landlord's fixtures, the general words were to be interpreted as referring to articles *ejusdem generis*, and consequently that the covenant did not prevent the lessee from removing the tenant's fixtures (*n*). In another case a lessee covenanted to surrender the premises "with all wainscots, *windows*, &c., and other things which then were or at any time thereafter should be thereunto affixed or belonging (looking-glasses and furniture excepted), and together also with all sheds and other erections, buildings, and *improvements*, which should be erected, built or made upon the said premises," and it was held that a plate-glass shop front, fixed in its place by wooden wedges, without screws, nails, or glue, and which could be removed without injury to the premises, was within the covenant and could not be removed (*o*). Again, where a lessee covenanted to deliver up certain enu-

(*l*) *Re* Moser, 13 Q. B. D. 738.
(*m*) Stansfield *v.* Mayor of Portsmouth, 27 L. J. C. P. 124; Sumner *v.* Brownlow, 34 L. J. Q. B. 130.
(*n*) Bishop *v.* Elliott, 11 Exch. R. 113; 24 L. J. Ex. 229.
(*o*) Burt *v.* Haslett, 25 L. J. C. P. 295.

merated articles, "and other additions, improvements, and things" which should be anyways fixed or fastened upon the premises, Vice-Chancellor Wood thought that the general words could not be restricted, there being no assignable genus to which the enumerated articles belonged; and the Vice-Chancellor held that the lessee could not make a marketable title to articles in the nature of tenant's fixtures (*p*).

It is evident from the above cases, that if it is intended that the lessee shall have the ordinary rights of a tenant with regard to fixtures, care must be taken that the covenants of the lease are so framed as not to prejudice that right.

Agricultural Holdings Act, 1883.

The relative rights of landlords and tenants of farms at the determination of the tenancy are considerably affected by the Agricultural Holdings Act, 1883 (*q*), which came into force on the 1st January, 1884. The operation of the Act is confined to holdings either wholly agricultural or wholly pastoral, or partly agricultural, and as to the residue pastoral, or in whole or in part cultivated as a market garden, and it does not apply to any holding let to the tenant during his continuance in any employment under the landlord (*r*).

Outgoing tenant to be allowed compensation for improvements falling within three classes.

Under this Act an outgoing tenant is to be allowed compensation for an improvement made by him during the tenancy and falling within either of the three classes following, viz.:—Class I. Erection or enlargement of buildings, formation of silos, laying down of permanent pasture, making and planting of osier beds, making of water meadows or works of irrigation, making of gardens, making or improving of roads or bridges, watercourses, ponds, wells, or reservoirs, or of works for the application of water power, or for supply of water for agricultural or domestic purposes, making of fences, planting of hops, planting of orchards or fruit bushes, reclaiming of waste land, warping of

(*p*) Wilson *v.* Whateley, 1 J. & H. 436. See also Dumerque *v.* Rumsey, 33 L. J. Ex. 88.

(*q*) 46 & 47 Vict. c. 61.

(*r*) Sect. 54.

land, and embankment and sluices against floods. Class II. Drainage; and Class III. Chalking, claying, liming, and marling of land, clay-burning, application to land of purchased artificial or other purchased manure, and consumption on the holding by cattle, sheep, or pigs, of cake or other feeding stuff not produced on the holding (*s*).

Principle on which compensation is to be assessed.

The compensation provided by the Act is such a sum as fairly represents the value of the improvement to an incoming tenant, but what is justly due to the inherent capabilities of the soil is not to be taken into account (*t*).

Act does not apply to improvements made before its commencement, with exceptions.

Compensation will not be payable under this Act in respect of improvements executed before its commencement, with certain exceptions (*u*).

Landlord's consent necessary to improvements of the first class.

As regards improvements of the first class made after the commencement of the Act, the landlord's consent is necessary, and such consent may be given either unconditionally or upon terms as to compensation and otherwise, and in the event of any agreement between the parties any compensation payable thereunder is to be substituted for that under the Act (*x*).

Notice to be given to landlord of intention to execute improvement of second class.

As regards an improvement of the second class, viz., drainage, done after the commencement of the Act, the tenant must give notice to the landlord of his intention to make it, and upon such notice being given they may agree on the terms as to compensation or otherwise, on which the improvement is to be executed, and any compensation so agreed on is to be substituted for that under the Act, or the landlord may undertake to execute the improvement himself, and charge the tenant with interest on the outlay at 5 per cent., or with such an annual sum payable for twenty-five years as will replace the outlay in that period, with interest at 3 per cent. The landlord and tenant may, if they think fit, dispense with any notice and come to an agreement in the lease or otherwise between themselves (*y*).

(*s*) First Schedule.
(*t*) Sect. 1.
(*u*) Sect. 2.
(*x*) Sect. 3.
(*y*) Sect. 4.

Compensation under agreement for improvements of third class may be substituted for that under Act.

As regards improvements of the third class, where any agreement secures to the tenant fair and reasonable compensation, such compensation will be substituted for that under the Act (*z*).

Compensation in case of current tenancies.

Where in the cases of tenancies current at the commencement of the Act, any agreement, or custom, or the Agricultural Holdings Act, 1875 (*a*), provides specific compensation for any improvement, such compensation will be substituted for that under the Act (*z*).

What deductions allowed.

Deductions are to be allowed for rent, taxes, rates, or tithe rent-charge in arrear and for breaches of the tenant's covenants, and for certain other matters (*b*).

Procedure where compensation is claimed.

The tenant must give notice of his intention to claim compensation at least two months before the determination of the tenancy, and in such case the landlord may before the end of the tenancy, or within fourteen days afterwards, give a counter notice of his intention to claim compensation. If the parties do not agree as to the amount, mode, and time for payment of compensation, the Act provides for the difference between them being settled by arbitration, and for an appeal to the County Court against the award where the sum claimed exceeds 50*l.* (*c*). It is also provided that a landlord on paying compensation to the tenant may obtain from the County Court a charge on the holding in respect thereof (*d*).

Restriction in respect of improvements by tenant about to quit.

With certain exceptions, a tenant will not be entitled to compensation for improvements begun after a notice to quit, or during the last year of a lease (*e*).

Tenant may not contract himself out of right to compensation.

Any contract by the tenant depriving him of his right to compensation for improvements is void (*f*).

Landlord may resume possession of part of

The Act also enables the landlord in case of tenancies from year to year to resume possession of part of the holding for improvement purposes by giving a

(*z*) Sect. 5.

(*a*) This Act is repealed by the Act of 1883, except as to the right of compensation for improvements executed before the commencement of the latter Act, or for improvements made after that date under a contract of tenancy then current. Sect. 62.

(*b*) Sect. 6.

(*c*) Sects. 7 to 28.

(*d*) Sects. 29 to 32.

(*e*) Sect. 59.

(*f*) Sect. 55.

holding for certain purposes.

notice to quit, the tenant to be entitled in such case to a proportionate reduction of rent, and also to have the option of giving up the entire holding (*g*).

Tenant's property in fixtures, machinery, &c.

The Act also provides that where after the Act a tenant affixes to his holding any engine, machinery, fencing, or other fixture, or erects any building for which he is not under the Act or otherwise entitled to compensation, and which is not so affixed or erected in pursuance of some obligation in that behalf, or instead of some fixture or building belonging to the landlord, then such fixture or building is to be the property of and be removable by the tenant: But before the removal of any fixture the tenant must pay all rent in arrear and perform all other his obligations to the landlord in respect of the holding. He must also give one month's previous notice in writing to the landlord of his intention to remove it, within which month the landlord may elect to purchase it at a valuation (*h*).

The provisions in the Act extending the time for a notice to quit, and as to distress have been already noticed.

VIII. *Leases under powers.*

Powers of leasing usually conferred by settlements.

Until the passing of the Settled Land Act, 1882, it was usual to give to a tenant for life in possession of settled land, or if there was no tenant for life in possession who was *sui juris*, to the trustees of the settlement, or to the guardians of an infant tenant for life or in tail, a power to grant leases for twenty-one years, and, if the nature of the property required it, building and mining leases.

Defective execution of power of leasing, when remedied.

Where a power of leasing prescribes conditions to be observed in regard to its exercise, care should be taken to comply with them. But a failure to do so, where the failure is one of form and not of substance, will generally be relieved against by the Court in the exercise of its equitable jurisdiction. And independently of the ordinary jurisdiction of the Court in

(*g*) Sect. 41. (*h*) Sect. 34.

aiding defective execution of a power, the legislature has made special provision for remedying defects in the case of leases. Thus, by the stat. 12 & 13 Vict. c. 26, it is provided that where in the intended exercise of any power of leasing, which by reason of the non-observance or omission of some condition or restriction or by reason of any other deviation from the terms of such power, is invalid against the remainderman, such lease, if made *bonâ fide*, and the lessee has entered thereunder, shall be considered in equity as a contract for a valid lease under such power, save so far as any variation may be necessary in order to comply with the terms of the power (*i*); and that where a lease under a power is invalid by reason that at the time of granting thereof the lessor could not lawfully grant the same, but the estate of such lessor in the property shall have continued after the time when such lease might have been granted by him, then the lease is to be valid (*k*). And by the Act 13 & 14 Vict. c. 17, it is provided that a receipt, or other memorandum in writing or payment of rent confirming an invalid lease, shall, as against the person giving such receipt, &c., be deemed a confirmation (*l*).

Stat. 12 & 13 Vict. c. 26.

Stat. 13 & 14 Vict. c. 17.

A tenant for life with a power of leasing at the best rent, &c., may, in a lease granted under the power, covenant for a renewal, and the covenant will be enforced if at the time for its performance the new lease reserves the best rent that can be obtained, and contains any stipulation authorized by the power (*m*).

Covenant for renewal by donee of power, when enforceable.

If the settlement contained no power of leasing, it was formerly necessary to obtain a private Act of Parliament to remedy the defect. But in 1856, an Act was passed to authorize sales and leases of settled estates, and was followed by amending Acts in subsequent sessions. All these Acts have been repealed and their provisions consolidated by the Settled Estates Act, 1877 (*n*).

Acts to authorize leases of settled estates now consolidated.

(*i*) Sect. 2.
(*k*) Sect. 4.
(*l*) Sect. 2.
(*m*) Gas Light Co. *v.* Towser, 35 C. D. 519.
(*n*) 40 & 41 Vict. c. 18.

Act of 1877 enables tenants for life, &c., to grant leases without any application to the Court.

This Act enables any person entitled to the possession or receipt of the rents and profits of any settled estates (as defined by the Act), for an estate for *any* life, or for a term of years determinable with any life or lives, or for any greater estate, either in his own right or in right of his wife (in the absence of any express declaration to the contrary in the settlement), and also any person entitled to the possession or receipt of the rents and profits of any unsettled estates as tenant by the curtesy, or in dower, or in right of a wife seised in fee, without any application to the Court, to demise the same except the principal mansion, and the lands usually occupied therewith, for any term not exceeding twenty-one years as regards estates in England, or for any term not exceeding thirty-five years as regards estates in Ireland, to take effect in possession or within one year from the making thereof, provided that the demise be by deed, and at the best rent without any premium, and be not without impeachment of waste (*o*), and contain a covenant to pay the rent and such other usual and proper covenants as the lessor shall think fit, and a condition of re-entry on non-payment of rent for twenty-eight days; and provided a counterpart be executed by the lessee (*p*), and the execution of the lease by the lessor is made sufficient evidence of the execution of the counterpart by the lessee (*q*).

Construction of similar clause in former Act.

The Act of 1856 (*r*) contained a clause similar to the above section in the present Act, except that the person to exercise the power was "any person entitled to the possession, &c., for an estate *for life*," instead of "for an estate for *any life*." Upon the construction of that clause, it was held that under a trust directing the trustees to receive the rents and apply them in paying certain charges, and to pay the surplus to A. for his life, A. could not exercise the power of leasing, as in such a case the trustees, and not A., are to have the

(*o*) A lease containing a covenant to keep the premises in repair, "fair wear and tear and damage by fire excepted," is void under the above Act. Davies *v.* Davies, 38 C. D. 499.

(*p*) Sect. 46.

(*q*) Sect. 48.

(*r*) 19 & 20 Vict. c. 120, s. 32.

management (*s*). But this case is not to be taken as a decision that a tenant for life who is to receive the rents and profits during his life through the intervention of a trustee is not within the Act (*t*).

High Court of Justice may authorize leases.

The Settled Estates Act, 1877, also empowers the High Court of Justice to authorize leases of settled estates including building and mining leases, upon the terms and conditions mentioned in the Act.

Power of leasing conferred by Settled Land Act.

The power of leasing conferred by sect. 46 of the Settled Estates Act is now supplemented by the more extensive powers contained in the Settled Land Acts, 1882 to 1890 (*u*). Under these Acts tenants for life (*x*) and other limited owners (*y*) may grant leases of settled land for terms not exceeding, as regards building leases, ninety-nine years, mining leases sixty years, and other leases twenty-one years, subject to the conditions prescribed by the Act (*z*), and in certain cases may, with the sanction of the Court, make leases for longer terms or building grants in perpetuity (*a*). It is provided, however, that under a mining lease a portion of the rent reserved, viz., three-fourths, where the tenant for life is impeachable for waste, and otherwise one-fourth part shall be capitalized (*b*); and it is also provided that before granting a lease (other than a lease for a term not exceeding twenty-one years at rack rent, and whereby the tenant is not exempted from punishment for waste), the tenant for life shall give a month's notice of his intention in that behalf to each trustee of the settlement, and also to the trustees' solicitor, if known to him (*c*), but the notice may be waived (*d*). The power may be exercised when the tenant for life is an infant by the trustees of the settlement (*e*), and where she is a married woman with the

Under mining lease, portion of rent to be capitalized.

Notice of intended lease for more than twenty-one years must be given to trustees.

Power how to be exercised when tenant for life is an infant or

(*s*) Taylor *v.* Taylor, L. R. 20 Eq. 297.
(*t*) Taylor *v.* Taylor, 3 C. D. 147.
(*u*) 45 & 46 Vict. c. 38; 47 & 48 Vict. c. 18; 50 & 51 Vict. c. 30; 52 & 53 Vict. c. 36; 53 & 54 Vict, c. 69.
(*x*) Act of 1882, s. 6.
(*y*) Sect. 58, which defines the persons who are to have all the powers of a tenant for life.
(*z*) Sects. 6 to 17; Act of 1889, s. 2; Act of 1890, ss. 7 to 9.
(*a*) Act of 1882, s. 10.
(*b*) Sect. 11.
(*c*) Sect. 45; Act of 1890, s. 7.
(*d*) Act of 1884, s. 5.
(*e*) Act of 1882, s. 60.

married woman.

concurrence of her husband, unless she is entitled for her separate use, in which case the husband's concurrence is unnecessary, and a restraint on anticipation will not prevent her from exercising the power (*e*). The principal mansion, however, and the pleasure grounds and park and land usually occupied therewith cannot be leased without the consent of the trustees of the settlement or an order of the Court (*f*).

Powers of Act are cumulative.

The powers given by the Act are cumulative, and do not preclude or interfere with the exercise of any powers for the same purpose conferred by the settlement or by any other Act (*g*).

Advantage of exercising power in Act of 1877 in some cases.

Under Act of 1877 open mine may be leased, without capitalizing rent.

It follows that a lease for twenty-one years may still be granted by a tenant for life under sect. 46 of the Settled Estates Act, 1877, and where there is an open mine on the settled estate, the tenant for life may lease it for twenty-one years under the former Act, without being obliged to consent to the capitalization of any part of the rent under sect. 11 of the latter Act (*h*).

Act applies to property held on trust for sale.

Where land is held by trustees on trust for sale, the tenant for life or other limited owner of the proceeds of the sale may exercise the powers of the Act with the leave of the Court (*i*).

Leasing power of mortgagor and of mortgagee in possession.

As regards mortgages made after the 31st December, 1881, the Conveyancing Act, 1881, s. 18, enables a mortgagor while in possession, and also a mortgagee in possession (except where a contrary intention is expressed in the mortgage deed) to make agricultural or occupation leases for any term not exceeding twenty-one years, and building leases for any term not exceeding ninety-nine years, subject to the following conditions:—(1) Every lease must be made to take effect in possession not later than twelve months after its date. (2) It must reserve the best rent that can reasonably be obtained, regard being had to the circumstances of the case, but without any fine being taken. (3) It must contain a covenant by the lessee for payment of the rent, and a condition of re-entry

(*e*) Sect. 61.
(*f*) Act of 1890, s. 10.
(*g*) Act of 1882, s. 56.
(*h*) Campbell *v.* Leach, Ambl. 740.
(*i*) Sect. 63. Act of 1884, s. 7.

on the rent not being paid within a time therein specified not exceeding thirty-one days. (4) A counterpart must be executed by the lessee and delivered to the lessor, of which execution and delivery the execution of the lease by the lessor is, in favour of the lessee, sufficient evidence. (5) Every building lease is to be made in consideration of the lessee or some person by whose direction the lease is granted, having erected, or agreeing to erect within not more than five years from the date of the lease, buildings, new or additional, or having improved or repaired buildings, or agreeing to improve or repair buildings, within that time, or having executed or agreeing to execute within that time, on the land leased, an improvement for or in connexion with building purposes. (6) In any building lease a peppercorn rent, or a nominal or other rent less than the rent ultimately payable, may be made payable for the first five years, or any less part of the term. (7) In case of a lease by the mortgagor, the lessor must, within one month after making the lease, deliver a counterpart to the mortgagee, or, where there are more than one, to the mortgagee first in priority, but the lessee need not see that this provision is complied with.

Leases by ecclesiastical persons and bodies.

The powers of ecclesiastical persons and bodies to grant leases are regulated by the Acts of Parliament mentioned below (*k*). The general effect of these enactments is to prohibit leases for more than twenty-one years of three lives, except as regards houses in towns, which may be demised for forty years, and incumbents must obtain the confirmation of the patron and ordinary in order to bind their successors. Other restrictions are imposed by the Acts (*l*). The remedial clauses in the Act 12 & 13 Vict. c. 26, above referred to do not apply to ecclesiastical leases (*m*).

(*k*) 32 Hen. 8, c. 28; 1 Eliz. c. 19; 13 Eliz. c. 10; 14 Eliz. c. 11; 18 Eliz. c. 11; 39 & 40 Geo. 3, c. 41; 5 & 6 Vict. c. 27.

(*l*) See Bacon Ab. Tit. Leases E.; Jenkins *v.* Green, 28 Beav. 87.

(*m*) Sect. 7.

IX. *Other matters relating to leases.*

Lessee estopped from disputing his landlord's title, but may show that it has expired.

A tenant cannot, during his possession of the premises demised, dispute the title of the landlord under whom he entered (*n*), and this rule extends to an under-tenant (*o*). But a tenant may show that the landlord's title has expired (*p*), and he may do that (among other ways) by showing an eviction either actual or constructive. Thus, if a tenant is evicted by a title paramount to the lessor's, he may plead such eviction, and it would seem that it is not necessary that he should wait to be actually evicted, but if he attorns to a party who has a right to evict him, and has actually commenced proceedings for that purpose, that is equivalent to an eviction (*q*). But a mere payment of rent to a party who threatens expulsion is not a constructive eviction (*r*).

Estoppel applicable to action for trespass.

The doctrine of estoppel is applicable to an action for trespass as well as for ejectment (*s*).

Implied covenant for quiet enjoyment.

Upon every demise, whether under seal or by parol, there is, in the absence of express covenant, an implied contract on the part of the lessor that he has a right to demise, and for quiet enjoyment by the lessee absolutely; and, consequently, if a tenant is evicted by a superior title, or is distrained on for a rent-charge charged on the land by a predecessor in title of the lessor, or is otherwise disturbed in his possession, he may sue the lessor on such implied covenant (*t*); nor is he bound to show that he has been actually evicted; for if a man demise land to which he has no title, an action on the covenant will lie against him,

(*n*) Doe d. Knight *v.* Lady Smythe, 4 M. & S. 347; Wood *v.* Day, 1 Moore, 389; Co. Litt. 47 *b*; 1 Wms. Saund. 325; Att.-Gen. *v.* Lord Hotham, 3 Russ. 415; Fleming *v.* Gooding, 10 Bing. 549; Francis *v.* Doe, 4 M. & W. 331.

(*o*) London & N. W. Railway Co. *v.* West, L. R. 2 C. P. 553.

(*p*) 1 Wms. Saund. 418; Neave *v.* Moss. 1 Bing. 360; Hopcroft *v.* Keys, 9 Bing. 613.

(*q*) Mayor, &c. of Poole *v.* Whitt, 15 M. & W. 571; 16 L. J. Ex. 229.

(*r*) Delaney *v.* Fox, 2 H. & N. 426; 26 L. J. C. P. 248.

(*s*) Delaney *v.* Fox, *ubi supra*.

(*t*) Noke's case, 4 Co. R. 80 *b*; Hancock *v.* Caffyn, 8 Bing. 358; Bundy *v.* Cartwright, 8 Ex. Rep. 913; Hall *v.* City of London Brewery Compy., 31 L. J. Q. B. 257.

although the lessee has never entered, because he is not bound to commit a trespass (*u*); and if a lessor grants a lease knowing that he has no title, and the lessee does not know it, the lease will be set aside (*u*). But the implied covenant ceases with the lessor's estate. Hence if tenant for life grants a lease for years, the implied covenant ceases on his death (*x*). If the lease contains an express covenant for quiet enjoyment, without any interruption from the lessor or any person claiming under him, such express covenant restrains the generality of the implied contract (*y*), and should therefore always be inserted in the interest of the lessor.

Ceases with lessor's estate.

Restrained by the express covenant.

It is a breach of a covenant for quiet enjoyment for a lessor to give notice to a sub-tenant of the lessee to pay his rent to him; and it is no answer to an action on the covenant that the lessee has not observed his own covenants—*e. g.*, to repair (*z*). But it is not a breach of such a covenant for the lessor to commit or permit a nuisance on an adjoining property (*a*).

Lessor sued on this covenant cannot plead breach by lessee of his own covenants.

Persons taking an estate in remainder under a settlement made by the lessor are deemed to claim under him within the meaning of the ordinary covenant for quiet enjoyment (*b*).

What persons are deemed to claim under lessor.

A tenant is bound to keep during his tenancy, and to leave at the end of it, his landlord's property not in any way confounded with his own (*c*), and the Court may at any time during the tenancy, as well as at the end of it, direct an inquiry to ascertain the boundary (*d*).

Tenant is bound not to confound boundaries.

In the absence of special stipulation, it is the practice for the lessor's solicitor to prepare the lease, and for

Practice as to preparation of leases.

(*u*) Mostyn *v.* West Mostyn Coal Compy., 1 C. P. D. 145.

(*x*) Adams *v.* Gibney, 8 L. J. C. P. 242; Penfield *v.* Abbott, 32 L. J. Q. B. 66.

(*y*) Noke's case, *ubi supra;* Line *v.* Stephenson, 4 Bing. N. C. 678; Stanley *v.* Hayes, 3 Q. B. 105; 11 L. J. Q. B. 176; Spencer *v.* Marriott, 1 B. & C. 457; Dennett *v.* Atherton, L. R. 7 Q. B. 316.

(*z*) Edge *v.* Boileau, 16 Q. B. D. 117.

(*a*) Jenkins *v.* Jackson, 40 C. D. 71.

(*b*) Hurd *v.* Fletcher, 1 Dougl. 43; Evans *v.* Vaughan, 4 B. & C. 261.

(*c*) Att.-Gen. *v.* Fullerton, 2 V. & B. 264.

(*d*) Spike *v.* Harding, 7 C. D. 871.

the lessee to pay his own expenses and those of the lessor.

X. *Stamps on leases and agreements for leases.*

The Stamp Act, 1891 (*e*), imposes the following duties on leases:—

	£	*s.*	*d.*
(1) For any definite term not exceeding a year:			
Of any dwelling-house, or part of a dwelling-house, at a rent not exceeding the rate of £10 per annum	0	0	1
(2) For any definite term less than a year:			
(a) Of any furnished dwelling-house or apartments where the rent for such term exceeds £25	0	2	6
(b) Of any lands, tenements, or heritable subjects, except or otherwise than as aforesaid	The same duty as a lease for a year at the rent reserved for the definite term.		
(3) For any other definite term, or for any indefinite term:			
Of any lands, tenements, or heritable subjects:—			
Where the consideration, or any part of the consideration, moving either to the lessor or to any other person, consists of any money, stock, or security:			
In respect of such consideration . .	The same duty as a conveyance on a sale for the same consideration.		
Where the consideration or any part of the consideration, is any rent:			
In respect of such consideration:			
If the rent, whether reserved as a yearly rent or otherwise, is at a rate, or average rate:			

(*e*) 54 & 55 Vict. c. 39, sched. "Lease or Tack."

	If the term is definite and does not exceed 35 years, or is indefinite.			If the term being indefinite exceeds 35 years, but does not exceed 100 years.			If the term being definite exceeds 100 years.		
	£	s.	d.	£	s.	d.	£	s.	d.
Not exceeding £5 per annum	0	0	6	0	3	0	0	6	0
Exceeding £5 and not exceeding £10	0	1	0	0	6	0	0	12	0
£10 „ „ £15	0	1	6	0	9	0	0	18	0
£15 „ „ £20	0	2	0	0	12	0	1	4	0
£20 „ „ £25	0	2	6	0	15	0	1	10	0
£25 „ „ £50	0	5	0	1	10	0	3	0	0
£50 „ „ £75	0	7	6	2	5	0	4	10	0
£75 „ „ £100	0	10	0	3	0	0	6	0	0
£100 For every full sum of £50, and also for any fractional part of £50 thereof . .	0	5	0	1	10	0	3	0	0

(4) Of any other kind whatsoever, not herein- before described . . . . . £ 0 s. 10 d. 0

The Act also contains the following clauses relating to stamps on leases :—

Agreements for not more than thirty-five years to be charged as leases.

Sect. 75. (1) An agreement for a lease or tack, or with respect to the letting of any lands, tenements, or heritable subjects for any term not exceeding thirty-five years, or for any indefinite term, is to be charged with the same duty as if it were an actual lease or tack made for the term and consideration mentioned in the agreement. (2) A lease or tack made subsequently to and in conformity with such an agreement, duly stamped, is to be charged with the duty of sixpence only.

Leases how to be charged in respect of produce, &c.

Sect. 76. (1) Where the consideration, or any part of the consideration, for which any lease or tack is granted or agreed to be granted, consists of any produce or other goods, the value of the produce or goods is to be deemed a consideration in respect of which the lease or tack or agree-

ment is chargeable with *ad valorem* duty. (2) Where it is stipulated that the value of the produce or goods is to amount at least to, or is not to exceed, a given sum, or where the lessee is specially charged with, or has the option of paying after, any permanent rate of conversion, the value of the produce or goods is, for the purpose of assessing the *ad valorem* duty, to be estimated at the given sum, or according to the permanent rate. (3) A lease or tack, or agreement for a lease or tack, made either wholly or partially, for any such consideration, if it contains a statement of the value of such consideration, and is stamped in accordance with the statement, is, so far as regards the subject-matter of the statement, to be deemed duly stamped, unless or until it is otherwise shown that the statement is incorrect, and that the lease or tack or agreement is in fact not duly stamped.

Statement as to value to be deemed true.

No additional duty on account of penal rent.

Sect. 77. (1) A lease or tack, or agreement for a lease or tack, or with respect to any letting, is not to be charged with any duty in respect of any penal rent, or increased rent in the nature of a penal rent, thereby reserved or agreed to be reserved or made payable, or by reason of being made in consideration of the surrender or abandonment of any existing lease, tack, or agreement, of or relating to the same subject-matter. (2) A lease made for any consideration in respect whereof it is chargeable with *ad valorem* duty, and in further consideration either of a covenant by the lessee to make, or of his having previously made, any substantial improvement of or addition to the property demised to him, or of any covenant relating to the matter of the lease, is not to be charged with any duty in respect of such further consideration. (3) No lease for a life or lives not exceeding three, or for a term of years determinable with a life or lives not exceeding three, and no lease for a term absolute not exceeding twenty-one years, granted by an ecclesiastical corporation aggregate or sole, is to be charged with any higher duty than thirty-five shillings (*f*). (5) An instrument whereby the rent reserved by any other instrument chargeable with duty, and duly

No additional duty on account of covenant to build.

Duty on leases by ecclesiastical corporations.

(*f*) Sub-sect. 4 has no application to land in England.

stamped as a lease or tack, is increased, is not to be charged with duty otherwise than as a lease or tack in consideration of the additional rent thereby made payable.

Duty in certain cases may be denoted by adhesive stamp.

Sect. 78. The duty upon an instrument chargeable with duty as a lease or tack of (a) any dwelling-house or tenement, or part of a dwelling-house or tenement, for a definite term not exceeding a year, at a rent not exceeding the rate of ten pounds per annum; or (b) any furnished dwelling-house or apartments, for any definite term less than a year, and upon the duplicate or counterpart of any such instrument, may be denoted by an adhesive stamp, which is to be cancelled by the person by whom the instrument is first executed. (2) Every person who executes, or prepares, or is employed in preparing any such instrument (except letters or correspondence) which is not, at or before the execution thereof, duly stamped, shall forfeit the sum of £5.

Penalty in certain cases.

Penalty in other cases.

As regards leases not falling within sect. 78, the lessee is liable to forfeit £10 if he does not stamp it properly within 30 days after its first execution, or, if executed abroad, after its first being received in the United Kingdom (*g*).

(*g*) Sect. 15.

No. I.

HOUSE FROM YEAR TO YEAR.

LEASE *of a* HOUSE *from* YEAR TO YEAR *or for a term of* THREE YEARS.

Parties.

MEMORANDUM OF AGREEMENT, made the —— day of ——, 18—, BETWEEN A. B. of, &c. (*landlord*), of the one part, and C. D. of, &c. (*tenant*), of the other part: The said A. B.

Agreement to let and take house.

(hereinafter called "the landlord") agrees to let, and the said C. D. (hereinafter called "the tenant") agrees to take, ALL that

From year to year.

messuage or dwelling-house, &c. (*describing it*): The tenancy to be from year to year, commencing on the —— day of ——, 18—, [*or* the tenancy to be for a term of three years] at the yearly

Rent.

rent of £——, payable by equal quarterly payments on, &c. (*days of payment*), the last quarterly payment to be made in advance on the —— day of —— preceding the end of the tenancy,

Tenant to pay rates and taxes.

together with the quarterly rent due on that day. AND THE TENANT agrees to pay all rates, taxes, and assessments payable in respect of the premises during the tenancy (except land tax and

To keep glass in the windows, &c.

the landlord's property tax): AND ALSO to keep all the glass in the windows, and all shutters, locks, fastenings, bells, and other internal fixtures in, upon, and belonging to the premises in good and sufficient repair during the tenancy, and the same in good and sufficient repair to deliver up at the end thereof (reasonable

Not to assign or underlet without consent.

wear and tear and damage by fire only excepted): AND the tenant also agrees not to assign or underlet the premises without the consent in writing of the landlord: AND IT IS AGREED that if

Condition of re-entry.

any rent shall be in arrear for twenty-eight days, or there shall be any breach by the tenant of the conditions above expressed, the landlord may re-enter on the premises without giving any

Landlord agrees for quiet enjoyment by tenant.

notice to quit, and expel the tenant therefrom: And the landlord agrees that the tenant paying the said rent, and observing the above conditions, shall quietly hold and enjoy the said premises without any lawful interruption by the landlord or any person claiming under him.

IN WITNESS, &c.

No. II.

AGREEMENT *for a* THREE YEARS' TENANCY *with option to the tenant to have a* LEASE *for a longer* TERM.

FOR THREE YEARS WITH OPTION TO HAVE A LEASE.

MEMORANDUM OF AGREEMENT, &c. (*same as last Precedent to the end, and then add the following*) : PROVIDED ALWAYS and it is agreed and declared, that if at any time during the tenancy hereby created, the tenant shall be desirous of having a lease of the said premises for a term of twenty-one years, determinable by him at the end of the first seven or fourteen years, and shall give to the landlord a notice in writing to that effect, then, and in such case, the landlord will grant to the tenant a lease of the said premises accordingly, for such term as aforesaid, the lease to commence and the term to be computed from the quarter day next following the date of such notice at the yearly rent of £——, and subject to the covenants and provisions contained in the form of lease which has been produced to the tenant and signed by him, being the form usually adopted on the —— estate, of which the said premises are part.

Proviso that tenant on giving notice shall be entitled to a lease of the premises for a term,

IN WITNESS, &c.

No. III.

AGREEMENT *for a* WEEKLY TENANCY *of a* HOUSE *or* PART *of a* HOUSE.

HOUSE OR ROOMS ON A WEEKLY TENANCY.

MEMORANDUM OF AGREEMENT dated the —— day of ——, 18—, WHEREBY A. B. of, &c. (*landlord*), agrees to let, and C. D. of, &c. (*tenant*), agrees to take the premises described below on a weekly tenancy at the weekly rent of —— shillings, the tenancy to commence on Saturday the —— day of ——, 18—, and to be determinable by either party on any Saturday by a week's previous notice.

HOUSE ON A WEEKLY TENANCY.

Description of the Premises.

The house No. —— in —— Street, in the parish of ——, in the county of —— [*or* The following rooms in the house (*describing them*)].

As WITNESS the hands of the parties.

No. IV.

OF FURNISHED HOUSE FOR A SHORT PERIOD.

LEASE *of a* FURNISHED HOUSE *with* GARDEN *for a short period,* TENANT *to take care of furniture and keep garden in good order,* LANDLORD *to keep house in repair.*

Agreement to let and take house and furniture.

MEMORANDUM OF AGREEMENT, &c. (*as in Precedent No. I.*): The said A. B. (hereinafter called "the landlord") agrees to let, and the said C. D. (hereinafter called "the tenant") agrees to take, ALL that messuage or dwelling-house called —— situate at ——, with the garden, grounds, and other appurtenances thereto belonging, and also the furniture and effects therein, as per inventory signed by both parties, from the —— day of ——, until the —— day of —— next, At the rent of £—— for every calendar month of the said tenancy, to be paid on the —— day of each month, the first payment to be made on the —— day of —— next: THE TENANT agrees to keep the said furniture and effects clean and in good condition and at the end of the tenancy to leave the said messuage, together with the said furniture and effects, clean and in as good state, condition, and repair as they are now in, and to make compensation for any damage done, or for any articles missing (reasonable wear and tear and damage by fire excepted); ALSO to keep the garden and grounds belonging to the said messuage in good order and condition during the tenancy, and so to leave the same at the end of the tenancy; ALSO not to assign or underlet the said premises or any part thereof, nor remove the said furniture and effects or any of them from the said premises,

Rent.

Tenant to keep furniture in good condition, and to leave house and furniture at end of lease in as good condition as at present and to make compensation for missing articles.

To keep garden in good order.

Not to assign or underlet without consent.

without the consent of the landlord. And it is agreed that if any rent, &c. (*condition for re-entry, supra*, p. 54). The Landlord agrees to execute all outside and inside repairs of the said messuage which may be found necessary in the course of reasonable wear, and to pay the ground rent, and all rates and taxes of every description, and to indemnify the tenant therefrom; And also that, &c. (*for quiet enjoyment by tenant, supra*, p. 54).

In witness, &c.

OF FURNISHED HOUSE FOR A SHORT PERIOD.

Condition of re-entry.

Landlord to do repairs, and to pay rates and taxes.

No. V.

LEASE *of* Unfurnished Apartments *on a* Quarterly Tenancy.

UNFURNISHED APARTMENTS.

MEMORANDUM OF AGREEMENT, &c. (*as before*). The said A. B. (hereinafter called "the landlord") agrees to let, and the said C. D. (hereinafter called "the tenant") agrees to take, the following rooms, part of a dwelling-house, No. —— in —— Street, in the town of —— (namely), the whole of the first and second floors, together with the use, in common with the other occupants of the house, of the water-closet on the ground floor; The tenancy to be from quarter to quarter, commencing on the 25th day of this present month of March, and determinable on any quarter day by either party giving to the other a quarter's notice to quit; At the rent of £—— for every quarter, to be paid on every quarter day during the tenancy; And the tenant agrees to deliver up the said premises at the end of the tenancy in as good repair and condition as the same are now in, reasonable wear and tear and damage by fire excepted.

In witness, &c.

Lease of rooms

from quarter to quarter.

Rent.

Agreement by tenant to give up premises in as good condition as same are now in.

No. VI.

FURNISHED APARTMENTS.

LEASE *of* Furnished Apartments *for* Six Months.

Agreement to let and take rooms and furniture

MEMORANDUM OF AGREEMENT, &c. (*as before*). The said A. B. (hereinafter called "the landlord") agrees to let, and the said C. D. (hereinafter called "the tenant") agrees to take, All those three rooms on the first floor of the messuage or dwelling-house, situate, &c., and all the furniture, articles, and things in or about the same specified in the schedule hereto, for

for six months.

the term of six calendar months, computed from the —— day of ——, at the rent of £—— for every calendar month, such rent to be paid on the first day of every calendar month, the first payment to be made on the first day of —— next: And the tenant agrees at the expiration of the tenancy to deliver up the said rooms, furniture, articles, and things in as good a condition as the same are now in, reasonable wear and tear and damage by fire excepted: And it is agreed that if any monthly payment of rent shall be in arrear for more than fourteen days the landlord may re-enter on the said premises and determine this demise.

Rent to be paid monthly.

Tenant to give up rooms, &c., in as good condition as same are now in.

Power to landlord to re-enter if rent in arrear.

In witness, &c.

No. VII.

OF A DWELLING-HOUSE.

LEASE (*h*) *of a* Dwelling-House *for* Twenty-one Years, *determinable on* Notice *at the end of* Seven *or* Fourteen Years. Usual Covenants *by* Lessee, *including covenants not to* Assign *or* Underlet *without consent of* Lessor, *or use the* House *except as a* Dwelling-house.

Parties.

THIS INDENTURE, made the —— day of ——, Between A. B. of, &c. (*lessor*), of the one part, and C. D. of, &c. (*lessee*),

(*h*) For variations of the above precedent, where the lease is made under a power conferred by deed or will or by statute, or where lessor is a married woman, see Precedent No. VIII., *infra*.

If the lease is made by a mortgagee under sect. 18 of the Conveyancing Act, 1881, the mortgage need not be disclosed, and the above precedent will be applicable as if he were beneficial owner. See p. 74, *infra*, note.

OF A DWELLING-HOUSE.

of the other part, WITNESSETH, that in consideration of the rent hereinafter reserved, and of the lessee's covenants hereinafter contained, the said A. B. (hereinafter called "the lessor") hereby demises unto the said C. D. (hereinafter called "the lessee"), ALL THAT messuage or dwelling-house, &c. (*parcels*), TO HOLD the same unto the lessee, for the term of twenty-one years from the —— day of ——, YIELDING AND PAYING during the said term the yearly rent of £——, by four equal quarterly payments, on the 25th day of March, the 24th day of June, the 29th day of September, and the 25th day of December, in every year, the first quarterly payment to be made on the 25th day of March next (*i*): AND the lessee hereby covenants with the lessor, in manner following (that is to say): That the lessee will pay the rent hereby reserved at the time and in manner aforesaid, and will also pay all rates, taxes, and assessments whatsoever, which now are, or during the said term shall be, imposed or assessed upon the said premises or the landlord or tenant in respect thereof, by authority of Parliament or otherwise (except the land tax and the landlord's property tax) (*k*): AND ALSO will at all times during the said term keep the said premises in good and substantial repair (*l*), and the same in good and substantial repair deliver up to the lessor at the expiration or sooner determination of the said term: AND in particular will paint with two coats at least of good oil colour and in a proper and workmanlike manner the outside wood

Witnessing part.

Demise of dwelling-house to lessee for twenty-one years.

Rent.

Covenants by lessee to pay rent,

and rates and taxes.

To keep premises in repair

and deliver up same in repair at end of term.

(*i*) Sometimes the last quarter's rent is made payable in advance. In such case add here, "and the last quarterly payment to be made in advance on the 29th day of September immediately preceding the expiration of the term, together with the quarterly payment falling due on that day."

(*k*) Under the above covenant the tenant will have to pay paving or sewering charges under local Acts of Parliament. *Vide supra*, p. 11. If it is not intended to throw this liability on the tenant, the words after "the said premises" down to "otherwise" should be omitted, and the following words added after "property tax:" and except also any charges or assessments for paving, sewering, or other similar purposes, which may hereafter be imposed on the said premises or the owner thereof by authority of Parliament or otherwise.

(*l*) Sometimes the lessor does the external and the lessee the internal repairs. See the next precedent.

OF A DWELLING-HOUSE.

and ironwork of the said premises once in every four years of the said term, and such parts of the inside of the said premises as have been usually painted once in every seven years of the said term, the last painting both outside and inside to be in the year immediately preceding the determination of this lease, whether by effluxion of time or notice: AND will at the same time with every outside painting restore and make good the outside stucco work wherever necessary, and at the same time with every inside painting whitewash and colour such parts of the inside of the said premises as are usually whitewashed and coloured: [AND ALSO will pay and contribute a fair proportion of the expenses of making, repairing, and securing all party and other walls, gutters, sewers, and drains belonging to the said demised premises in common with the adjacent premises]: AND ALSO will permit the lessor, or his agent, with or without workmen, and others, twice in every year during the said term, at convenient hours in the day time to enter into and upon the said demised premises, and view and examine the state and condition thereof, and of all such decays, defects, and wants of reparation as shall be then and there found, to give to the lessee notice in writing to repair and amend the same within six calendar months then next following, within which time the lessee will repair and amend the same accordingly: AND ALSO will insure and keep insured the said demised premises from loss or damage by fire, in the joint names of the lessor and lessee, in the —— Insurance Office, or in some other well-established office to be approved of by the lessor, in the sum of £—— at least, and will pay all premiums and sums of money necessary for that purpose, and will whenever required produce to the lessor the policy of such insurance, and the receipt for every such payment, and will cause all moneys received by virtue of any such insurance to be forthwith laid out in rebuilding and reinstating the said premises, and if the moneys so received shall be insufficient for the purpose, will pay the deficiency out of his own moneys: AND ALSO will not at any time during the said term carry on or permit to be carried on any trade or business upon the said premises, or permit the same to be occupied or used in any other manner than as a private dwelling-house: AND ALSO will not (except by will) assign or underlet the said demised premises, or any part thereof, without the con-

To paint outside every four years, and inside every seven years.

To restore outside stucco work,

and whitewash and colour inside.

To contribute to repairs of party walls, &c.

To permit lessor to enter to view state of premises,

and to repair after notice of defects.

To insure in joint names of lessor and lessee,

to pay premiums, &c., and produce policy and receipts for premiums,

to lay out insurance moneys in rebuilding,

and if insufficient, to make up deficiency,

not to carry on any trade, but to use premises as private dwelling-house.

Not to assign

sent in writing of the lessor, first had and obtained [unless such consent shall be unreasonably withheld]: PROVIDED ALWAYS, and it is hereby declared, that if the said yearly rent of £—— or any part thereof, shall be in arrear for the space of twenty-one days next after any of the days whereon the same ought to be paid as aforesaid, whether the same shall or shall not have been legally demanded, or if there shall be any breach or non-observance of any of the lessee's covenants hereinbefore contained (*m*), then and in any of the said cases it shall be lawful for the lessor, at any time thereafter, into and upon the said demised premises, or any part thereof, in the name of the whole to re-enter, and the same to have again, re-possess, and enjoy as in his former estate: PROVIDED ALSO, and it is hereby declared that if the lessee shall be desirous of determining this lease at the end of the first seven or fourteen years of the said term, and of such desire shall give to the lessor, or his agent, or leave at his usual or last known place of abode in England or Wales, six calendar months' previous notice in writing, then and in such case at the end of such seven or fourteen years, as the case may be, the term hereby granted shall cease, but subject to the rights and remedies of the lessor for or in respect of any rent in arrear, or any breach of any of the lessee's covenants: AND the lessor (*n*) hereby covenants with the lessee, that the lessee paying the rent hereby reserved, and observing and performing the covenants and conditions herein contained, and on his part to be observed and performed, shall and may peaceably and quietly possess and enjoy the said premises hereby demised during the said term without any lawful interruption from or by the lessor (*n*) or any person rightfully claiming from or under him. AND IT IS DECLARED that where the context allows the expressions "the lessor" and "the lessee" used in these presents include respectively, besides the said A. B., his heirs [*or if the lease is made*

OF A DWELLING-HOUSE.

or underlet without consent, but consent not to be unreasonably withheld.

Power of re-entry for non-payment of rent or breach of covenants.

Power to lessee to determine lease at end of seven or fourteen years.

Covenant by lessor for quiet enjoyment by lessee.

Meaning of "lessor" and "lessee."

(*m*) It is apprehended that the above proviso for re-entry will apply to the breach of a negative as well as an affirmative covenant. Evans *v.* Davis, 10 C. D. 74.

(*n*) If the lease is by a tenant for life, or other limited owner under a power contained in a settlement not made by himself, it will be safer to substitute "the said A. B." for "the lessor," as otherwise, having regard to the interpretation clause at the end of the deed, a question might be raised whether the covenant would not render him liable for the acts of the remainderman.

OF A DWELLING-HOUSE.

under a power, successors in title] and assigns (*o*), and besides the said C. D., his executors, administrators, and assigns.

IN WITNESS, &c.

No. VIII.

UNDER POWERS, ETC.

VARIATIONS *of* LAST PRECEDENT *to be made where* LEASE *is* (1) *under a* POWER *created by* DEED *or* WILL; (2) *by a* TENANT *for* LIFE *or a* PERSON *having the powers of a* TENANT FOR LIFE *under the* SETTLED LAND ACT, 1882; (3) *by the* TRUSTEES *of a settlement on behalf of an* INFANT *tenant for life under that Act;* (4) *by a* PERSON *appointed by the* COURT *to exercise the* POWERS *of the Act on behalf of an* INFANT TENANT *in* FEE SIMPLE; (5) *by a* TENANT FOR LIFE *of the* PROCEEDS *of* LAND *vested in trustees for sale with leave of the* COURT; (6) *by a* HUSBAND *seised in right of his* WIFE *under the* SETTLED ESTATES ACT, 1877; (7) *by a* HUSBAND AND WIFE *when* WIFE *is* TENANT FOR LIFE *under the* SETTLED LAND ACT, 1882; (8) *by a* WIFE TENANT FOR LIFE *for her* SEPARATE USE *under that Act;* (9) *by a* MARRIED WOMAN *of her* SEPARATE *property under the* MARRIED WOMEN'S PROPERTY ACT, 1882; (10) *by a* LUNATIC *by his* COMMITTEE; (11) *by a* LUNATIC *tenant for life by his* COMMITTEE.

1. Under a power created by deed or will.

1. THIS INDENTURE made, &c., (*date and parties as in Precedent No. VII.*) WITNESSETH, that in consideration of the rent, &c., the said A. B. (hereinafter called "the lessor") in exercise of the power (*p*) for this purpose given to him by an

(*o*) For an interpretation clause in the case of an underlease, see Precedent No. X., *infra*, p. 72.

(*p*) A power of leasing conferred by a deed or will is not taken away by the Settled Land Act; but if a power for the same purpose is vested by the Act in some other person, the consent of that person is necessary to its exercise. Sect. 56. In the above case it is supposed that the powers given by the deed or will and by the Act are vested in the same person.

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indenture dated, &c., and made, &c., (*date and parties*) *or* by the will of L. M., late of, &c., dated the —— day of ——, 18—, and proved on the —— day of ——, 18—, in the principal probate registry of the High Court of Justice, and of all other powers (if any) him hereunto enabling, doth hereby appoint and demise, &c., (*the rest as in Precedent No. VII. to the end*).

2. By a tenant for life, &c., under Settled Land Act.

2. THIS INDENTURE, made, &c., (*date and parties as in Precedent No. VII.*). WHEREAS under an indenture dated, &c., and made, &c. (*date and parties*), [*or* under the will, &c.] the said A. B. is beneficially entitled to the possession of the hereditaments intended to be hereby demised for his life (*q*) [*or* for the life of X. Y., *or* in fee simple, subject to an executory limitation over on failure of his issue, *or*, *in the case of any other limited owner, state the nature of his ownership*] (*r*). NOW THIS INDENTURE WITNESSETH that in consideration, &c., the said A. B. (hereinafter called "the lessor") in exercise of the power for this purpose given to him by the Settled Land Act, 1882, and of all other powers (if any) him hereunto enabling doth hereby demise, &c. (*the rest as in Precedent No. VII. to the end* (*s*).

3. By trustees of a settlement on behalf of infant tenant for life, &c.

3. THIS INDENTURE, made the —— day of ——, 18—, BETWEEN E. F. of, &c., and G. H. of, &c. (*trustees of the settlement*), of the first part, A. B. of, &c. (*infant tenant for life*) (*t*), of the second part, and C. D. of, &c. (*lessee*), of the third part.

Recital of settlement.

WHEREAS under an indenture dated, &c., and made, &c., the said A. B. who is an infant is, or if of full age would be, beneficially entitled to the possession of the hereditaments intended to be hereby demised as tenant [for life *or* in tail, *or as the case may be*]; and the said E. F. and G. H. are the trustees thereof for the purposes of the Settled Land Act, 1882 (*u*):

(*q*) Settled Land Act, 1882, ss. 6—14, 20.

(*r*) Sect. 58.

(*s*) This form will be applicable whether the person granting the lease has a legal or only an equitable estate. In either case the benefit of the covenants entered into with him will, under sect. 10 of the Conveyancing Act, 1881, be annexed and incident to and go with the reversion.

(*t*) The infant is made a party, as the covenants will be entered into with him, but he will not execute the lease.

(*u*) See the definition of the term "trustees of the settlement" in sect. 2, sub-sect. 8. The above form of recital will be applicable whether the trustees are appointed by the settlement itself or by the Court under sect. 38.

UNDER POWERS, ETC.

NOW THIS INDENTURE WITNESSETH that in consideration, &c., the said E. F. and G. H. for and on behalf of the said A. B. (hereinafter called "the lessor") in exercise of the power for this purpose given to them by the Settled Land Act, 1882, and of all other powers (if any) them hereunto enabling do hereby demise, &c., (*the rest as in Precedent No. VII. to the end, omitting the covenant by the lessor for quiet enjoyment*).

4. By person appointed by Court to exercise powers of Act on behalf of infant tenant in fee simple.

4. THIS INDENTURE made the —— day of —— 18—, BETWEEN E. F. of, &c. (*person appointed by Court to act for infant*) of the first part, A. B. of, &c. (*infant tenant in fee simple*) of the second part, and C. D. of, &c. (*lessee*) of the third part. WHEREAS F. G., late of, &c., died on the —— day of ——, 18—, intestate, seised in fee simple of the hereditaments intended to be hereby demised, and leaving the said A. B., who is an infant, his eldest son, and heir-at-law: AND WHEREAS by an order (*x*) of the High Court of Justice (Chancery Division) dated the —— day of ——, 18—, and made in the matter of, &c., and of the Settled Land Act, 1882, on the application of the said A. B., by L. M. his next friend, it was ordered that the powers conferred upon a tenant for life by sections 6 to 13 both inclusive, and sections 16 to 20 both inclusive, of the said Act, might be exercised by the said E. F. on behalf of the said A. B. during his minority: NOW THIS INDENTURE WITNESSETH that in consideration, &c., the said E. F. on behalf of the said A. B. (hereinafter called "the lessor") in exercise of the power for this purpose given to him by the Settled Land Act, 1882, and of all other powers (if any) him hereunto enabling doth hereby demise, &c., (*the rest as in Precedent No. VII. to the end, omitting the lessor's covenant for quiet enjoyment*).

5. By tenant for life of proceeds of sale of property vested in trustees for sale, with leave of Court.

5. THIS INDENTURE made the —— day of ——, 18—, BETWEEN A. B. of, &c., (*tenant for life of proceeds*) of the one part, and C. D. of, &c., (*lessee*) of the other part: WHEREAS under the following deeds, namely (*state dates and parties* [*or* under the will of, &c. dated, &c., and proved, &c.] the hereditaments intended to be hereby demised are vested in trustees for sale, and the said A. B. is beneficially entitled during his life to the income of the moneys to arise from the sale of the said hereditaments, and to the rents and profits thereof until such

(*x*) Sects. 59, 60.

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sale: AND WHEREAS by an order of the High Court of Justice (Chancery Division) dated the —— day of ——, 18—, and made in the matter of, &c., leave has been given to the said A. B. to exercise the powers of leasing conferred by section 63 of the Settled Land Act, 1882 (*y*): NOW THIS INDENTURE WITNESSETH, that in consideration, &c., the said A. B. (hereinafter called "the lessor"), in exercise of the power for this purpose given to him by the Settled Land Act, 1882, and of all other powers (if any) him hereunto enabling, doth hereby demise, &c., (*the rest the same as in Precedent No. VII. to the end*).

6. By husband seised in right of his wife under Settled Estates Act, 1877.

6. THIS INDENTURE made the —— day of ——, 18—, BETWEEN A. B. of, &c. (*lessor*), of the one part, and C. D. of, &c. (*lessee*), of the other part, WITNESSETH that in consideration, &c., the said A. B. (hereinafter called "the lessor"), being beneficially entitled to the possession of the hereditaments hereinafter described in right of E. B. his wife, who is seised in fee simple thereof, doth hereby, in exercise of the power for this purpose given to him by the Settled Estates Act, 1877 (*z*), and of all other powers (if any) him hereunto enabling, demise, &c., (*the rest as in Precedent No. VII. to the end*).

7. By husband and wife under Settled Land Act.

7. THIS INDENTURE made the —— day of ——, 18—, BETWEEN A. B. of, &c., and E. his wife (*lessors*), of the one part, and C. D. of, &c. (*lessee*), of the other part: (*Recite settlement under which E. B. is tenant for life as in No. 2, supra, p. 63, substituting* "her" *for* "him"). NOW THIS INDENTURE WITNESSETH that in consideration, &c., the said A. B., and E. his wife, in exercise of the power for this purpose given to them by the Settled Land Act, 1882 (*a*), and of all other powers (if any) them hereunto enabling, do hereby demise, &c. (*the rest as in Precedent No. VII. to the end, substituting* "lessors" *for* "lessor" *throughout*).

8. By wife tenant for life for her separate use.

8. THIS INDENTURE, made the —— day of ——, 18—, BETWEEN E. B., the wife of A. B., of, &c. (*lessor*), of the one part, and C. D. of, &c. (*lessee*), of the other part: (*Recite settlement under which E. B. is tenant for life, No. 2, supra, substituting* "her" *for* "his," *and adding* "for her separate use

(*y*) Settled Land Act, 1884, s. 7.
(*z*) 40 & 41 Vict. c. 18, s. 46.
(*a*) Sect. 61.

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without power of anticipation.") NOW THIS INDENTURE WITNESSETH, that in consideration, &c., the said E. B. (hereinafter called "the lessor"), in exercise of the power for this purpose given to her by the Settled Land Act, 1882 (*b*), and of all other powers (if any) her hereunto enabling, doth hereby demise, &c. (*The rest as in Precedent No. VII. to the end, substituting* "her" *for* "him" *when necessary.*)

9. By married woman of her separate property under Married Women's Property Act.

9. THIS INDENTURE, made the —— day of ——, 18—, BETWEEN E. B., the wife of A. B. of, &c., to whom she was married on the —— day of ——, 1883 (*c*), (*lessor*), of the one part, and C. D. of, &c. (*lessee*), of the other part: WITNESSETH, &c. (*same as in Precedent No. VII. to the end, substituting* "her" *for* "him" *when necessary*).

10. By a lunatic by his committee.

10. THIS INDENTURE, made the —— day of ——, 18—, BETWEEN A. B. of, &c., a lunatic so found by inquisition (*lessor*), by X. Y., the committee of his estate acting in this behalf, pursuant to an order of the judge in lunacy, dated the —— day of ——, 18— (*d*), of the one part, and C. D. of, &c. (*lessee*), of the other part: WITNESSETH that in pursuance of the said order, and in consideration, &c., the said A. B. (hereinafter called "the lessor") by the said X. Y., his committee, doth hereby demise, &c.

11. By a lunatic tenant for life under Settled Land Acts.

11. THIS INDENTURE, made the —— day of ——, 18—, BETWEEN A. B. of, &c., a lunatic so found by inquisition, by X. Y., the committee of his estate, of the one part, and C. D. of, &c. (*lessee*), of the other part: (*Recite settlement under which A. B. is tenant for life, that he had been found a lunatic, and order appointing committee*): AND WHEREAS by an order of ——, being one of the judges of the Supreme Court of Judicature intrusted by the sign manual of her Majesty with the care and commitment of the custody of the persons and estates of lunatics, dated the —— day of ——, 18—, and made in the matter of the said A. B., and of the Settled Land Acts, 1882 to 1890, it was ordered that the said X. Y. might exercise, in the name and on

(*b*) Sect. 61.

(*c*) This date is inserted to show that the marriage took place after the commencement of the Married Women's Property Act, 1882, viz., 1st Jan., 1883. If the lessor was married before that date, but the property was acquired since, the reference to the date of the marriage should be omitted, and a recital introduced showing the acquisition.

(*d*) See Lunacy Act, 1890 (53 Vict. c. 5), s. 120.

behalf of the said A. B., the powers of a tenant for life under the said Acts: NOW THIS INDENTURE WITNESSETH, that in consideration, &c., the said A. B. (hereinafter called "the lessor"), by the said X. Y., his committee, in exercise of the power for this purpose conferred by the Settled Land Act, 1882 (*e*), and of all other powers (if any) him hereunto enabling, doth hereby demise, &c. (*The rest the same as in Precedent No. VII. to the end.*)

UNDER POWERS, ETC.

No. IX.

LEASE *of a* HOUSE *and* GARDEN *where the* LESSEE *does the* INTERNAL *and the* LESSOR *the* EXTERNAL REPAIRS.

OF A HOUSE AND GARDEN.

THIS INDENTURE, made, &c., BETWEEN A. B. of, &c. (*lessor*), of the one part, and C. D. of, &c. (*lessee*), of the other part: WITNESSETH that in consideration, &c., the said A. B. (hereinafter called "the lessor"), hereby demises unto the said C. D. (hereinafter called "the lessee"), ALL that messuage or dwelling-house, &c., together with the garden, conservatory, vineries, coach-house, stable, and buildings thereto belonging, and the fixtures comprised in the schedule hereto, TOGETHER with full and free liberty (in common with the lessor and all other persons from time to time having a similar right) for the lessee and his servants and workmen, with or without horses, carts or carriages, and on foot, to pass and repass at all times, through, over, and along the road or lane leading from the main road to the said coach-house and stable at the back of the said premises, TO HOLD the same unto the lessee for the term of twenty-one years from the —— day of ——, 18—, determinable nevertheless as hereinafter mentioned: YIELDING AND PAYING during the said term the yearly rent of £—— by equal quarterly payments on the —— day of ——, the —— day of ——, the —— day of ——, and the ——

Parties.

Demise of house and garden,

with right to use road in common with others,

to lessee for term.

Rent.

(*e*) Sect. 62.

OF A HOUSE AND GARDEN.

day of ——, the first quarterly payment to be made on the —— day of ——: AND the lessee hereby covenants with the lessor in manner following (that is to say), THAT the lessee will, during the said term, pay the rent hereby reserved on the days and in manner aforesaid, and will also pay all rates, taxes, and assessments which now are, or which may hereafter, during the said term, become payable in respect of the premises hereby demised (except land tax and landlord's property tax, and except also any charges or assessments for paving, sewering, or other similar purposes which may hereafter, by any public authority or otherwise, be imposed on and made payable by the owner of the premises), and will also, during the said term, keep the interior parts of the said dwelling-house, coach-house, and stable, and the glass in the windows and in the conservatory and vineries, and all fixtures comprised in the schedule hereto, and all water-closets, drains, sinks, cistern pipes, and other internal fixtures upon and belonging to the premises in good and sufficient repair (reasonable wear and tear, and damage by fire and tempest only excepted), and maintain and keep in good order and condition the shrubs, vines, and fruit trees, and the carriage drive and paths in and about the said premises, and the same in good and sufficient repair, order, and condition (except as aforesaid), deliver up at the end or sooner determination of the said term: AND also will permit the lessor, at a reasonable hour in the daytime, twice in every year, to enter upon the said premises to view the state and condition thereof: AND also will not use the said dwelling-house otherwise than for a private dwelling-house, nor assign or underlet the same without the previous written consent of the lessor, such consent, however, not to be unreasonably or vexatiously withheld: PROVIDED ALWAYS, &c. (*power of re-entry on non-payment of rent or breach of covenants, supra*, p. 61): AND the lessor hereby covenants with the lessee, that the lessor will keep the outside walls and roofs of the said dwelling-house, coach-house, and stable, and other exterior parts of the said premises (except the glass in the windows and in the conservatory and vineries), in good repair and condition, and once in every three years during the said term paint with good oil colour all the outside wood and ironwork which is usually painted: AND will also forthwith rebuild and reinstate the said dwelling-house or other buildings,

Covenant by lessee to pay rent, and rates and taxes.

To keep interior parts in repair

and deliver up same at end of term.

To permit lessor to enter and inspect.

To use premises as a private dwelling-house, and not to assign, &c., without lessor's consent.

Covenants by lessor to keep outside in repair,

and to paint outside once every three years;

to rebuild in case of fire or tempest;

in case of destruction or damage by fire or tempest: AND that the lessee, paying the said rent and performing the covenants hereinbefore contained and on his part to be performed, shall and may peaceably and quietly possess and enjoy the said premises hereby demised during the said term, without any lawful interruption from or by the lessor or any person rightfully claiming from or under him: AND IT IS HEREBY FURTHER AGREED AND DECLARED that in case the said dwelling-house or the coach-house and stable, or any part or parts thereof, shall be destroyed or rendered uninhabitable or unfit for use by fire or tempest during the said term, then, and so often as the same shall happen, a just proportion of the rent hereby reserved according to the extent of the injury sustained, shall cease and be suspended during so long a time as the said premises or any part or parts thereof shall remain uninhabitable or unfit for use; and if any dispute shall arise between the lessor and the lessee, in regard to the amount of the abatement to be so made in the said rent, or the period for which the said rent or any part thereof shall be suspended, the same shall be referred to arbitration under the Arbitration Act, 1889 (*a*): AND IT IS HEREBY FURTHER AGREED AND DECLARED that if the lessee, &c. (*power to lessee to determine lease by notice at the end of the seventh or fourteenth year, and meaning of words* "lessor" *and* "lessee," *supra*, p. 61).

for quiet enjoyment by lessee.

Rent to be suspended in case of destruction by fire or tempest.

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

(*a*) Under this clause the reference will be to a single arbitrator: see the first schedule to the Arbitration Act. If it is wished that the reference should be to two arbitrators, substitute for the above, shall be referred to two arbitrators, one to be appointed by each party, in accordance with the Arbitration Act, 1889.

No. X.

OF A HOUSE AND GARDEN.

UNDER-LEASE *of a* DWELLING-HOUSE *and* GARDEN *for a* TERM *of* SEVEN YEARS, *determinable by* EITHER PARTY *at the* END *of the* THIRD *or* FIFTH YEAR; *the* INTERNAL REPAIRS *to be done by the* LESSEE, *and the* EXTERNAL REPAIRS *by the* LESSOR, *who also* INSURES *against* FIRE; PROVISION *for* SUSPENDING *rent in case of* DAMAGE *by* FIRE.

Parties. THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*lessor*), of the one part, and C. D. of, &c. (*lessee*),

Witnessing part. of the other part, WITNESSETH, that in consideration, &c.,

Demise of house, &c., the said A. B. (hereinafter called "the lessor") hereby demises unto the said C. D. (hereinafter called "the lessee"), ALL THAT, &c. (*describe premises*), Together with the fixtures now in and about the said premises, a list whereof is set forth in the schedule

to lessee for term of seven years, determinable. hereto: TO HOLD the same unto the lessee for the term of seven years from the —— day of ——, 18—, determinable nevertheless as hereinafter mentioned, YIELDING AND PAYING during the

Rent. said term the yearly rent of £—— by equal quarterly payments, on the —— day of ——, the —— day of ——, the —— day of ——, and the —— day of ——, the first quarterly payment

Further rent in respect of insurance against fire. thereof to be made on the —— day of —— next. [AND ALSO yielding and paying during the term by way of further rent a yearly sum equal to the sum or sums which the lessor shall from time to time pay by way of premium for keeping the said premises insured against loss or damage by fire, pursuant to the covenant in that behalf hereinafter contained, the said further rent to be paid once a year on the quarter day immediately

Lessee's covenant to pay rent and taxes; following the payment of such premium] (*y*). AND the lessee hereby covenants with the lessor in manner following (that is to say): that the lessee, &c. (*to pay rent, rates, and taxes,*

(*y*) When the lessor is himself a lessee, and has covenanted with the ground landlord for insurance, it is generally more convenient that he and not the inferior lessee should see to the insurance; and in such case it is often provided that the latter shall pay an additional rent equal to the premium.

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supra, p. 68): And will at all times during the said term keep in good and sufficient repair and condition the inside of the said messuage and premises, and the fixtures comprised in the schedule hereto, and the same in such repair and condition deliver up at the end of the lease: And also will keep the garden and walks in good order, and the trees and ornamental shrubs properly pruned, and will renew any trees or shrubs which may perish or decay, and will not cut down or remove any trees or shrubs without the written consent of the lessor; And also will permit the lessor, and also the superior landlord from time to time to enter into and upon the said premises in order to view the state and condition thereof: And will not, without the consent in writing of the lessor, assign or underlet the said premises or any part thereof, or carry on or permit to be carried on any trade or business thereon, or permit the same to be occupied in any other manner than as a private dwelling-house, or as a furnished lodging-house: And will not, allow any sale by auction to take place on the said premises, or do or suffer any other thing whatsoever which might be an annoyance to the neighbours or a breach of any covenant or condition in the ground lease: Provided always, &c. (*power of re-entry on non-payment of rent or breach of covenants, supra*, p. 61): And the lessor hereby covenants with the lessee in manner following, that is to say, That, &c. (*covenant for quiet enjoyment by lessee, supra*, p. 69): And also that the lessor will during the said term pay the ground-rent payable in respect of the said premises, and will keep the outside walls and roofs, with the outside water-pipes and shoots and outside drains and sewers, properly repaired and cleansed, and the exterior woodwork and ironwork properly and sufficiently painted as required to be done under the lease from the ground landlord dated the —— day of ——: And also will at all times during the said term keep the said messuage and premises insured against loss or damage by fire in the sum of £—— at least, in conformity with the covenant in that behalf contained in the said ground lease: And will, whenever required so to do by the lessee, produce to him the policy of such insurance and the receipt for the last premium, and will cause all moneys received in respect of such insurance to be forthwith laid out in the reinstating of the premises: And also will at all times at the request and

to keep inside in repair,

and garden in good order.

Not to assign without licence,

or carry on trade,

or allow sale by auction.

Covenant by lessor for quiet enjoyment by lessee,

and to keep outside of house in good repair,

and to insure against fire,

and to produce superior lease.

OF A HOUSE AND GARDEN.

cost of the lessee produce to him the said ground lease: PROVIDED ALWAYS (*rent to be suspended in case of destruction by fire, supra*, p. 69, *omitting the words* "or tempest"): PROVIDED ALWAYS, and it is hereby further agreed and declared, that if the lessor or the lessee shall be desirous of determining this lease at the expiration of the third or fifth year of the said term of seven years, and of such desire shall give to the other party, or leave for him at his usual or last known place of abode in England, six calendar months' previous notice in writing, then on the expiration of the said third or fifth year, as the case may be, the term hereby granted shall cease and determine, but without prejudice to the rights and remedies of the lessor for any arrears of rent or any breach of the lessee's covenants. AND IT IS DECLARED that where the context allows, the expressions "the lessor" and "the lessee," hereinbefore used, include besides the said A. B. and C. D. their respective executors, administrators, and assigns.

Power to either party to determine lease at end of third or fifth year.

Meaning of "lessor" and "lessee."

IN WITNESS, &c.

No. XI.

LEASE *by* MORTGAGEE *and* MORTGAGOR (*z*).

BY MORTGAGEE AND MORTGAGOR.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (in whom the legal estate in the hereditaments hereinafter demised is vested by way of mortgage) (*mortgagee*), of the first part, C. D. of, &c. (being the person entitled to the equity of redemption of the said hereditaments) (*mortgagor*), of the second part, and E. F. of, &c. (*lessee*), of the third part, WITNESSETH, that in consideration, &c., the said A. B. (hereinafter called "the lessor") at the request of the said C. D., hereby demises, and the said C. D. hereby demises and confirms unto the said E. F. (hereinafter called "the lessee"), ALL, &c.

Parties.

Witnessing part.

Mortgagee and mortgagor demise to lessee.

(*z*) It is assumed in the above Precedent that the mortgage was made before the 1st January, 1882, or that the leasing power conferred by the Conveyancing Act, 1881, s. 18, on the mortgagor is negatived by the mortgage deed.

BY MORTGAGEE AND MORTGAGOR.

(*parcels—Habendum to lessee, for twenty-one years, at a yearly rent, as in Precedent No. VII., supra*, p. 59): AND THE lessee hereby covenants with the lessor in manner following, that is to say: That, &c. (*covenants by lessee, and proviso for re-entry, as in Precedent No. VII., verbatim*): AND THE lessor, and also the said C. D., as to their own respective acts and deeds, but not further or otherwise, do hereby respectively covenant with the lessee that he paying the rent hereby reserved, and observing and performing the lessee's covenants hereinbefore contained, shall and may peaceably and quietly possess and enjoy the said premises during the said term without any eviction or disturbance by the said covenanting persons respectively, or any person lawfully or equitably claiming from or under them respectively: PROVIDED ALWAYS, and it is hereby agreed and declared, that the lessee shall pay the rent hereby reserved unto the said C. D. or other the person for the time being entitled to the equity of redemption of the said premises, until the lessor shall by a notice in writing require the payment of the said rent to himself, and until such notice the said C. D. or other the person entitled as aforesaid shall have the like remedy by distress for recovery of arrears of the said rent as he would have had if seised at law of the said premises in reversion expectant on this lease, and shall and may exercise all the rights and powers conferred by these presents on the lessor. (*Meaning of "lessor" and "lessee," supra*, p. 61.)

Covenants by lessee.

Covenants by lessors for quiet enjoyment by lessee.

Proviso that until notice, rent may be paid to mortgagor, and mortgagor may exercise rights and powers of lessor.

IN WITNESS, &c.

No. XII.

LEASE *by a* MORTGAGOR *under a* POWER *created by the* MORTGAGE DEED (*a*).

BY MORTGAGOR UNDER POWER.

THIS INDENTURE, made the —— day of ——, BETWEEN C. D. of, &c. (*mortgagor*), of the first part, A. B. of, &c. (*mort-*

Parties.

(*a*) In this Precedent the mortgagee is made a party, the lessee's covenants being entered into with him as the person entitled to the legal reversion, but it is not intended that he shall execute the deed.

A mortgagor would in most cases prefer not to disclose the mortgage,

BY MORTGAGOR UNDER POWER.

gagee), of the second part, and E. F. of, &c. (*lessee*), of the third part. WHEREAS under an indenture, &c. (*date and parties*), the hereditaments hereinafter described are vested in the said A. B. by way of mortgage, and the said C. D., who is entitled to the equity of redemption of the said hereditaments and is in possession thereof, has power under the said indenture to lease the same in manner hereinafter expressed: NOW THIS INDENTURE WITNESSETH, that in consideration, &c., the said C. D. in exercise of the power vested in him for this purpose by the said indenture, and of all other powers (if any) him hereunto enabling, hereby appoints and demises unto the said E. F. ALL, &c. (*parcels—Habendum to lessee for term, and reservation of rent, supra*, p. 59). AND the said E. F. hereby covenants with the said A. B., and also by way of separate covenant with the said C. D., in manner following, that is to say: THAT he the said E. F., his executors, administrators, and assigns (all of whom are hereinafter included in the expression "the lessee"), will pay to the person for the time being entitled to the reversion expectant on this lease (hereinafter called "the reversioner") the rent, &c. (*covenant to pay rent and taxes, supra*, p. 59); AND ALSO that the lessee will, &c. (*covenants to repair and other lessee's covenants, and proviso for re-entry, as in Precedent No. VII. supra*, pp. 59 to 61, *substituting* "the reversioner" *for* "the lessor"): AND the said C. D. hereby covenants, &c. (*covenant for quiet enjoyment, supra*, p. 61), without any lawful interruption from or by the said C. D., or from or by the said A. B., or any person rightfully claiming from or under either of

Recital of mortgage deed.

Witnessing part.

Mortgagor appoints and demises unto lessee.

Covenants by lessee,

and by lessor.

and to frame the lease as if he were absolute owner. Whether a lease so framed would be binding on the mortgagee, if made under a power created by the mortgage deed, and requiring in express terms that the rent shall be reserved to, and the covenants entered into with, the mortgagee, is doubtful. See Yellowly *v.* Gower, 11 Exch. 274; 24 L. J. Exch. 289. But as regards leases made under the power conferred on a mortgagor in possession by the Conveyancing Act, 1881, the omission of all reference to the mortgage would not affect the validity of the lease. The right to grant leases is thereby annexed and made incident to the office and estate of the mortgagor, and the reservation of rent, &c. to the mortgagor enures, under the operation of sect. 10 of the Act, to the benefit of the mortgagee should he subsequently take possession and give notice to the lessee to pay the rent to him. Municipal, &c. Building Society *v.* Smith, 22 Q. B. D. 70.

A lease by mortgagor under the statutory power, omitting all reference to the mortgage, is valid.

A lease by a mortgagor under the statutory power will therefore be in the same form as if he were absolute owner, and no separate precedent for such a lease is necessary.

them: PROVIDED ALWAYS, &c. (*proviso that rent shall be paid to mortgagor until notice, &c., supra*, p. 73, *substituting* "the reversioner" *for* "the lessor"). BY MORTGAGOR UNDER POWER.

IN WITNESS, &c.

No. XIII.

PROVISION *in a* LEASE *or* UNDERLEASE *enabling the* LESSEE *to* PURCHASE *the* REVERSION *in fee simple or* THE TERM *granted by the* SUPERIOR LEASE *upon Notice* (*b*).

OPTION TO LESSEE TO PURCHASE REVERSION.

THIS INDENTURE, &c. (*Lease or underlease as in Precedent No. VII. or No. X. to the end, adding the following provision*): PROVIDED ALWAYS, and it is hereby agreed and declared, that if the lessee shall be desirous of purchasing the reversion in fee simple in the premises hereby demised [*or* the unexpired residue of the term of years granted in the said premises by the said indenture, dated, &c. (*superior lease*) subject to the rent and lessee's covenants reserved by and contained in the said indenture], at the price of £——, and shall at any time before the —— day of ——, 18— (*c*), give to the lessor, or leave for him at his usual or last known place of abode in England or

Power to lessee on giving notice to lessor to purchase reversion in fee simple, or superior leasehold interest.

(*b*) According to the form here given, the giving of the notice by the lessee to the lessor will constitute the relation of vendor and purchaser between them, so as to entitle each party to specific performance of the contract for sale. Sometimes the clause is so worded as to make the payment of the money a condition precedent to the right of purchase. Thus, in Lord Ranelagh *v.* Melton, 2 Dr. & Sm. 278, the lease provided that if the lessee should desire to purchase the fee simple, and should give three months' notice of such desire, and at the expiration of such notice should pay the purchase-money, then the lessor would convey the property to the lessee, and it was held that the money must be paid on the precise day on which the notice expired, and that until the condition was thus performed the relation of vendor and purchaser did not arise on either side. See also Weston *v.* Collins, 34 L. J. Ch. 353.

In clause giving to lessee right of purchase, payment of money on the day sometimes made a condition precedent.

(*c*) The day fixed must be within twenty-one years from the date of the lease, or within some life in being and twenty-one years afterwards, in order not to infringe the rule against perpetuities. The case of Birmingham Canal Compy. *v.* Cartwright, 11 Ch. D. 421, in which it was held that the rule against perpetuities did not apply to a provision of this kind, is overruled. London & S. W. Ry. Compy. *v.* Gomm, 20 Ch. D. 582.

Rule against perpetuities applies to option of purchase.

OPTION TO LESSEE TO PURCHASE REVERSION.

Wales, a notice in writing to that effect, then and in such case the person giving or leaving such notice shall be deemed the purchaser of the said reversion [*or* of the unexpired residue of the said term subject as aforesaid] at the price of £——, as from the date of such notice subject to the following conditions (namely): 1stly, THE purchase-money shall be paid and the purchase shall be completed on such one of the quarterly days hereby appointed for payment of rent as shall happen next after the expiration of three calendar months from the date of such notice, and if the said purchase shall not be completed on that day, the purchaser shall pay to the vendor interest on the said purchase-money after the rate of 5 per cent. per annum, computed from that day up to the actual completion of the purchase; 2ndly, THE purchaser shall pay all arrears of rent up to the day appointed for the completion of the purchase, including the quarter's rent due on that day; 3rdly, UPON payment of the purchase-money and all arrears of rent at the time aforesaid, the vendor shall execute a proper conveyance [*or* assignment] of the said premises to the purchaser, such conveyance [*or* assignment] to be prepared by and at the expense of the purchaser; 4thly, THE vendor shall, within one calendar month from the date of such notice as aforesaid, deliver to the purchaser or his solicitor an abstract of the vendor's title to the said premises, such title to commence with an indenture, dated, &c.; 5thly, WITHIN fourteen days after the delivery of the abstract the purchaser shall state in writing, and send to the vendor's solicitor, all objections and requisitions (if any) in respect of the title, and all objections and requisitions not sent within that time shall be deemed to be waived, and if any objection or requisition shall be made which the vendor shall be unable or unwilling to remove or comply with, the vendor may, by a notice in writing, rescind the sale without payment of any compensation or costs whatsoever (*d*).

Time for completion.

Arrears of rent to be paid up to completion.

Conveyance.

Title when to commence.

Requisitions to be sent within specified time.

IN WITNESS, &c.

Purchase-money to be paid by lessee electing to purchase, goes to personal representative of lessor.

(*d*) If the option to purchase is exercised by the lessee after the lessor's death, the purchase-money will go to his (the lessor's) personal representative as part of his personal estate, and not to the heir or devisee of the real estate. Lawes *v.* Bennett, 1 Cox, 167; Townley *v.* Bedwell, 14 Ves. 591; Weeding *v.* Weeding, 1 J. & H. 424. This is inconvenient, and generally contrary to the lessor's intention, and it is therefore important that he should make proper provision by his will not only for enabling the sale to

No. XIV.

AGREEMENT *for a* BUILDING LEASE *for the erection of* ONE HOUSE *for* NINETY-NINE YEARS.

AGREEMENT FOR BUILDING LEASE.

AN AGREEMENT, made the —— day of ——, 18—, BETWEEN A. B. of, &c., of the one part, and C. D. of, &c., of the other part, whereby it is agreed as follows :— Parties.

1. WHEN and so soon as the messuage or dwelling-house mentioned in the third article of this agreement shall have been erected and completed by the said C. D., the said A. B. will, by a good and sufficient lease, demise unto the said C. D. all that piece or parcel of land (*describe it*) and the messuage or dwelling-house, and buildings to be erected thereon, for the term of ninety-nine years, computed from the —— day of —— last, at the yearly rent of a peppercorn, if demanded, for the first year of the said term, and at the yearly rent of £—— during the residue thereof, payable quarterly on the —— day of ——, the —— day of ——, the —— day of ——, and the —— day of ——; the first of such quarterly payments to be made on the —— day of ——. Agreement to grant lease.

2. THE lease shall contain covenants by the lessee : To pay the said rent of £—— at the times and in manner aforesaid : To pay all taxes, rates, charges, and assessments to be payable either by landlord or tenant in respect of the premises (except the landlord's property-tax, if any) : To keep the said messuage or dwelling-house and buildings in good and substantial repair, and deliver the same up to the lessor at the end of the term in good and substantial repair : To insure and keep insured the said messuage or dwelling-house and buildings to at least three-fourths of the value thereof in the joint names of the lessee and lessor in one of the public fire insurance offices in London or Provisions to be inserted in lease.

be carried out if the option is exercised, but also for making the purchase-money go to the persons who would otherwise have remained entitled to the reversion.

The option to purchase is incident to the leasehold interest, and passes with it, so that if the lessee dies intestate it is exerciseable by the administrator with the consent of the next of kin and not by the heir. *Re* Adams and the Kensington Vestry, 24 Ch. D. 199. Option to purchase devolves with leasehold interest.

AGREEMENT FOR BUILDING LEASE.

Westminster, and at all times when required to produce the policy of insurance, and the receipts of the premiums in respect of the same, to the lessor, or his agent, and to cause any money received by virtue of any such insurance to be forthwith applied in reinstating the premises, and if the same shall be insufficient to make up the deficiency: To pay a reasonable share and proportion for and towards the costs and expenses of making, supporting, and repairing all pavements, fences, and party-walls, sewers, and drains belonging to the said premises, in common with other messuages, tenements, or lands, and so that such proportion shall be ascertained by the surveyor of the lessor: To permit the lessor, with or without workmen, or others, twice or oftener in every year during the said term, to enter upon the said premises to view the condition thereof, and also during the last seven years to take a schedule of the landlord's fixtures: And the said lease shall also contain a condition for re-entry by the lessor on non-payment of rent for twenty-one days, or on breach of any of the lessee's covenants: And the said lease shall also contain all other covenants and conditions (if any) usually inserted in leases of the like nature.

Lessee to erect messuage, &c.

3. The said C. D. will, before the —— day of ——, 18—, at his own expense, and at an outlay of £—— at the least, in a good, substantial, and workmanlike manner, of the best materials, and to the satisfaction of the surveyor of the said A. B., erect, build, and completely finish, fit for habitation and use, upon the front of the said piece of land towards the —— road, at the distance of —— feet from the boundary line of such road, coloured red in the said plan, a good and substantial brick messuage or dwelling-house of the rate of building, character, and description in every respect specified in the specification hereto annexed by way of schedule, and also such outbuildings, conveniences, and sewers as shall be necessary or proper to be used with such messuage or dwelling-house for rendering the same commodious.

Power to lessor to enter if lessee fails to complete buildings.

4. If the said C. D. shall not complete the said messuage or dwelling-house before the said —— day of ——, 18—, pursuant to article 3, or shall not proceed with the works with proper diligence, then it shall be lawful for the said A. B. or his agent, if he thinks fit, to re-enter on the said piece of ground and resume possession thereof as of his former estate.

AGREEMENT FOR BUILDING LEASE.

5. The said C. D. will accept a lease of the said premises for the term, at the rent, and subject to the covenants and conditions hereinbefore expressed, and will execute a counterpart thereof, and pay the costs and expenses of and incidental to the preparation and execution of this agreement and the said lease and the counterpart thereof. Lessee will accept lease, execute counterpart, and pay costs of same.

In witness, &c.

Where it is intended that the intended lessee shall have the right to call for the lessor's title (e), *the following clauses will be substituted in the above Precedent for clause* 5.

5. Before commencing operations under this agreement the said C. D. shall be at liberty to examine the title of the said A. B., such title to commence with an indenture dated, &c., and an abstract thereof to be delivered to the said C. D. within seven days from the date of this agreement. The said C. D. shall send to the said A. B., or his solicitor, his objections and requisitions in respect of the title or the abstract within fourteen days from the receipt of the abstract, and subject to such objections and requisitions shall be deemed to have accepted the title. If any objection or requisition shall be made which the said A. B. shall be unable or unwilling to remove or comply with, he shall be at liberty to rescind this agreement by giving to the said C. D. a notice in writing to that effect, in which case the said C. D. shall have no claim for compensation or costs. All expenses connected with the verification of the title or otherwise, which in case of a sale are now by law payable by the purchaser, shall be payable by the said C. D.

Intended lessee to be at liberty to examine lessor's title from a certain date.

Abstract.

Time for sending in requisitions, &c.

Power to lessor to rescind in case of objections.

Costs to be borne by lessee.

6. Subject to the last preceding article the said C. D. agrees to accept a lease of the premises upon the terms above set forth, and to execute a counterpart thereof, and the costs and expenses attending the preparation and execution of this agreement, and

Lessee to execute counterpart.

Costs of agreement and lease to be borne equally.

(e) In the absence of stipulation, an intended lessee is not entitled to call for the lessor's title. Vendor and Purchaser Act, 1874, s. 2, sub-s. 1. When, therefore, he contemplates a large outlay, it will be prudent in him to stipulate for the production of some title on the lessor's part, particularly as according to a recent case the Act does not protect him from the application of the doctrine of equity as to constructive notice. Patman *v.* Harland, 17 C. D. 353.

Prudence of requiring to see the lessor's title.

AGREEMENT FOR BUILDING LEASE.

the said lease and the counterpart thereof, shall be borne by the said A. B. and C. D. in equal shares (*f*).

In witness, &c.

No. XV.

AGREEMENT FOR BUILDING LEASE. [*Another Form.*]

AGREEMENT *for a* Lease *for* Ninety-nine years *of a piece of* Land *on which* several Dwelling Houses *are agreed to be* built *by the* Lessee. Special provisions *enabling him to have* separate Leases *of the* several Houses *and to* apportion *the* Rent.

MEMORANDUM OF AGREEMENT, made the —— day of ——, Between A. B. of, &c., of the one part, and C. D. of, &c., of the other part, whereby it is agreed as follows:—

Parties.

Agreement to grant lease or leases.

1. When and so soon as the six several messuages or dwelling houses, erections, and buildings hereinafter agreed to be erected and built, shall be completely finished and made fit for habitation, occupation, and use, to the satisfaction of the architect or surveyor for the time being of the said A. B., and such architect or surveyor shall have granted his certificate in writing to that effect, the said A. B. will by one or more good and sufficient lease or leases demise to the said C. D. All that piece or parcel of land (*describing it*), and the messuages and buildings to be erected thereon, with their appurtenances, for the term of ninety-nine years, computed from the —— day of —— at the yearly rent of one peppercorn for the first year of the said term, the rent of £—— for the second year thereof, and the rent of £—— for the third year and remainder of the said term, such rent to be payable quarterly on the 25th day of March, the 24th day of June, the 29th day of September, and the 25th day of December in every year, the first of such quarterly payments to be made on the —— day of ——.

(*f*) Although the general practice is for the lessee to pay the whole expense of the lease, it is sometimes arranged, as in the text, that he shall pay half only.

AGREEMENT FOR BUILDING LEASE. [*Another Form.*]

Provisions to be inserted in such lease.

2. EVERY such lease shall contain the following covenants on the part of the lessee: To pay the rent and the land-tax, sewers rate, and all other taxes and assessments, parliamentary and parochial, or otherwise payable either by the landlord or tenant for or in respect of the premises, except the landlord's property tax; To keep the said premises in good and substantial repair, and deliver the same up in good and substantial repair at the end of the term; To paint the external wood, cement, and iron-work once in every four years, and the inside wood, iron, and other work before painted or usually painted, once in every seven years with two coats of good oil colour: To insure and keep insured against fire, in the joint names of the lessor and lessee, in the —— office, or some other office in London or Westminster, the buildings comprised in such lease, in a sum at least equal to three fourth parts of the value of such buildings, and to produce to the lessor the policy of every such insurance and the receipts for every premium whenever the same shall be demanded; and that any money received by virtue of any insurance shall be forthwith expended in reinstating the premises, and if the same shall be insufficient for that purpose then to make up the deficiency out of his own moneys: To permit the lessor or his agent, with or without workmen and others, at all reasonable times of the day during the said term to enter and view the state of the premises, and during the last seven years of the term to take an inventory of the landlord's fixtures: Not to carry on any trade or business on the said premises, without the written consent of the lessor first had and obtained, and not to permit any encroachment upon the premises, or any right of light or other easement to be acquired over or upon the said premises by or in respect of any premises adjoining or near thereto; and also that the lessee will, within twenty-one days after every assignment or under-lease of the said premises, or any part thereof, shall have been made, give notice in writing thereof to the lessor or his agent, stating the short effect and particulars of such assignment or under-lease: And every such lease shall contain a condition or proviso for re-entry by the lessor upon non-payment of rent for twenty-one days, or breach of any of the said covenants, and shall also contain all other covenants and provisions (if any) usually inserted in leases of the like nature.

AGREEMENT FOR BUILDING LEASE. [*Another Form.*]

3. The said C. D. shall at his option have either one lease of all the said six dwelling-houses to be erected as aforesaid, or separate leases of any one or more thereof, and in case of separate leases the said rent shall be rateably apportioned between the premises to be comprised in each lease, the amount of such apportioned rents respectively to be fixed and ascertained by the architect or surveyor for the time being of the lessor.

Lessee may have either one lease or separate leases.

Lessee to erect houses.

4. The said C. D. will on or before the —— day of ——, 18—, erect, cover in, and complete, fit for habitation and use, upon the piece of ground hereby agreed to be demised, in a good, substantial, and workmanlike manner, with fit and proper materials, to be approved of by the architect or surveyor for the time being of the said A. B., and under his direction and inspection, and according to a plan, elevation, and detail drawings thereof, which have been signed by the parties hereto, and a copy whereof has been deposited with the said architect or surveyor, six brick-built and slated dwelling-houses, with the areas, forecourts, iron railings, gates, and garden walls, and other appurtenances thereto belonging.

5. (*Power to lessor to re-enter, supra*, p. 78.)

Lessee to accept lease or leases.

6. The said C. D. will accept a lease or leases of the said premises for the term, at the rent, and subject to the covenants and conditions hereinbefore expressed, and will execute a counterpart of every such lease thereof, and will pay the costs and expenses of and incidental to the preparation and execution of this agreement, and of every such lease and counterpart (*g*).

In witness, &c.

(*g*) If the lessor is to show his title, the stipulations at the end of the last Precedent should be introduced instead of Clause 6, above. See pp. 79.

No. XVI.

BUILDING LEASE *for* NINETY-NINE YEARS (*h*).

BUILDING LEASE UNDER POWER.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*lessor*), of the one part, and C. D. of, &c. (*lessee*), of the other part, WITNESSETH, that in consideration of the rent and lessee's covenants hereinafter reserved and contained, the said A. B. (hereinafter called "the lessor"), hereby demises unto the said C. D. (hereinafter called "the lessee"), ALL THAT piece or parcel of ground, &c., TOGETHER WITH the messuage or dwelling-house now in course of erection thereon: AND TOGETHER also with full and free liberty to pass and repass, with or without horses, carts, and carriages, over the roadway made or intended to be made at the back of the said piece of ground, as shown in the plan drawn in the margin of these presents, TO HOLD the same unto the lessee from the —— day of —— last, for the term of ninety-nine years thence next ensuing, YIELDING AND PAYING for the first year of the said term the rent of a peppercorn, if demanded, and, during the residue of the said term, the yearly rent of £20 sterling, by equal quarterly payments on the —— day of ——, the —— day of ——, the —— day of ——, and the —— day of ——, free from all taxes, rates, and assessments whatsoever (except the landlord's property tax, if any), the first of such quarterly payments to be made on the —— day of ——: AND THE lessee hereby covenants with the lessor in manner following (that is to say), THAT the lessee will pay the yearly rent hereby reserved, at the times and in manner hereinbefore appointed: AND ALSO will, during the said term, pay all taxes, rates, charges, and assessments which now are, or during the said term shall be, imposed or assessed upon the said premises hereby demised, or the landlord or tenant in respect thereof (except the landlord's property tax, if any): AND ALSO will,

Parties.

Witnessing part.

Lessor demises premises and a right of way to lessee for ninety-nine years.

Rent.

Covenant by lessee

to pay rent,

and to pay taxes,

and to build

(*h*) If the lease is made under a power conferred by deed or will or by the Settled Land Act, or if the lessor is a married woman, one of the forms in Precedent No. VIII., suited to the case, may be adopted as a variation of the above Precedent.

BUILDING LEASE UNDER POWER.

a dwelling-house within a specified time, and to insure,

within the space of —— calendar months from the day of the date hereof, in a good, substantial, and workmanlike manner, and to the satisfaction of the lessor or his surveyor, complete, so as to be fit for habitation and use, the messuage or tenement now in course of erection upon the said land: AND ALSO will, upon the completion of the said messuage, insure the same to at least two-thirds of the value thereof, in the joint names of the lessor and lessee, and either in conjunction or not with the name or names of any underlessee or underlessees, or other person or persons interested therein, in one of the public fire insurance offices in London or Westminster, and will during the said term keep the same so insured, and upon the request of the lessor or his agent, from time to time produce to him the policy of such insurance, and the receipt for the premium for the then current year, and if such messuage, or any part thereof, shall be destroyed or damaged by fire, will forthwith rebuild or reinstate the same under the direction of the lessor or his surveyor: AND ALSO will at all times during the said term keep the said messuage and premises in good and substantial repair, and the same in such good and substantial repair, at the end or sooner determination of the said term, peaceably surrender and yield up unto the lessor together with all things in the nature of landlord's fixtures, which at any time during the said term shall be affixed and belong to the premises: AND ALSO will at all times during the said term, pay and allow a reasonable share and proportion for and towards the costs and expenses of making, supporting, and repairing the said roadway or intended roadway at the back of the said piece of ground, and all or any pavements, fences, and party walls, sewers, and drains, which now or at any time during the said term shall belong to the said premises or any part thereof, in common with other messuages or tenements or lands, and that such proportion shall be ascertained by the surveyor or agent of the lessor, and shall be recoverable as rent in arrear: AND ALSO THAT it shall be lawful for the lessor, or any person or persons to be deputed by him, with or without workmen or others, twice or oftener in every year during the said term, at reasonable times in the day time, to enter upon the said premises or any part thereof, to view the state and condition thereof, and also at any time during the last seven years of the said term to take a schedule of the fixtures and things in and

and to produce to the lessor receipts for premiums,

and keep premises in repair, and deliver up the premises in good repair at the end of the term,

and pay proportion of expense of repairing roadway, party walls, &c.

Lessor may enter premises at any time to view the condition thereof, and take a schedule of fixtures during last seven years.

BUILDING LEASE UNDER POWER.

upon the premises (not being tenant's fixtures), and also that it shall be lawful for the lessor and his tenants or occupiers of the houses adjoining to the said premises, and the workmen of such lessor, tenants, or occupiers, at reasonable times in the day time, to come into or upon the said premises, or any part thereof, to repair such adjoining houses as often as occasion shall require: AND ALSO that the lessor and his tenants shall have liberty of watercourse in and through the said premises hereby demised to carry off the water from his other houses, which are or may be contiguous or near to the said premises, and that if need be the tenants of such other houses shall be permitted to come into and upon the said premises hereby demised to empty and cleanse the cesspools, gutters, sewers and drains of and belonging to such other houses: AND ALSO that the lessee will not, without the consent in writing of the lessor, exercise or carry on, or permit or suffer to be exercised or carried on upon any part of the premises hereby demised, any trade or business whatsoever, but will keep the said messuage and premises strictly as a private dwelling-house: AND ALSO will upon every assignment of the said demised premises, or any part thereof, within one calendar month after the execution of such assignment, give to the lessor's solicitors notice in writing thereof, specifying in such notice the name and residence of the assignee, and will produce the said assignment at the office of the said solicitors for registration, and in order that they may place and sign thereon a memorandum of such registration, and will pay to the said solicitors a fee of —— for such registration: PROVIDED ALWAYS that if the yearly rent hereby reserved or any part thereof shall at any time be unpaid for the space of twenty-one days after the same shall have become due, whether the same shall have been lawfully demanded or not, or if there shall be any breach or non-observance of any of the lessee's covenants herein contained, then and in any such case it shall be lawful for the lessor to enter into and upon the said demised premises or any part thereof in the name of the whole, and to repossess the same as of his former estate: AND the lessor (*a*) hereby covenants with the lessee that the lessee paying the rent hereby reserved, and observing and performing the covenants and conditions herein contained, and on his part

Lessor and occupiers of adjoining houses may enter to repair such houses.

Lessor to have liberty of watercourse.

Lessee to use messuage only as a dwelling-house.

To give notice of assignments to lessor's solicitors.

Proviso for re-entry.

Lessor's covenant for quiet enjoyment by lessee.

(*a*) See p. 61, n. (*n*).

BUILDING LEASE UNDER POWER.

to be observed and performed, shall and may quietly possess and enjoy the said premises during the said term without any lawful interruption from or by the lessor (*a*), or any person rightfully claiming from or under him. (*Meaning of "lessor" and "lessee," supra*, p. 61.)

In witness, &c.

No. XVII.

BUILDING LEASE.

BUILDING LEASE *to a person who* Covenants *to complete* Ten Houses, *with provisions for* Apportioning Rent *between the* several Houses. *The* land *demised is* part *of a* considerable Estate *let on similar leases to* other Persons.

Parties.

THIS INDENTURE, made the —— day of ——, Between A. B. of, &c., and C. D. of, &c. (hereinafter called "the lessors") (*lessors*) of the one part, and E. F. of, &c. (hereinafter called "the lessee") (*lessee*) of the other part, WITNESSETH, that in consideration of the expense incurred and to be incurred by the lessee in and about the erection and completion of the messuages or dwelling-houses hereinafter mentioned, and of the rent hereinafter reserved, and the lessee's covenants hereinafter contained, the lessors hereby demise unto the lessee, All that

Lessors demise parcels

piece or parcel of land situate in —— Street in —— aforesaid, the dimensions and boundaries whereof are shown and delineated on the plan drawn in the margin of these presents and therein coloured pink, Together with the ten several messuages or dwelling-houses now in course of erection thereon, And together also with the use in common of all roads and sewers made or hereafter to be made for the accommodation of the owners and occupiers of the estate of the lessors: To hold the premises unto the lessee for the term of 99 years, to be computed from the 29th

to lessee for ninety-nine years,

(*a*) See p. 61, n. (*n*).

BUILDING LEASE.

day of September, 18—, YIELDING AND PAYING therefor yearly during the said term the rent of £——, by equal half-yearly payments on the 25th day of March and the 29th day of September in every year, the first payment to be made on the —— day of —— next; AND the lessee hereby covenants with the lessors, in manner following, that is to say, THAT the lessee will pay the yearly rent hereby reserved on the days and in the manner hereinbefore appointed for payment thereof, and will also pay all taxes, rates, charges, and impositions whatsoever, whether parliamentary, parochial, or otherwise (except the landlord's property tax), payable for the time being in respect of the said premises hereby demised, or any part thereof, or by the landlord or tenant of the same in respect thereof; And also will forthwith well and sufficiently fence off the said premises hereby demised from the adjoining property: AND ALSO will within the space of —— from the date of these presents, at his (the lessee's) own expense, erect, complete, and finish in and upon the said premises, in a workmanlike and substantial manner, under the inspection and to the satisfaction of the surveyor for the time being of the lessors, the said messuages or dwelling-houses, with proper and suitable out-buildings, walls, yards, drains, and other conveniences, and with a paved footway in front of the same according to the specification and plan deposited with the lessors, and signed by the lessee, and that in erecting and building the said messuages or dwelling-houses, the description, substance, and scantlings of materials to be used shall be subject to the inspection and approbation of such surveyor as aforesaid: And also that he the lessee will not, without the previous license in writing of the lessors or their surveyor, erect, or set up, or suffer to be erected or set up on any part of the said premises hereby demised, any messuage or building other than and except the messuages or dwelling-houses hereby covenanted to be erected and except out-buildings to be occupied and used therewith, not exceeding 15 feet in height to the ridge of the roof, and 200 superficial feet in area, and will not, without such license as aforesaid, make any alteration in the plan or elevation of the said messuages, or dwelling-houses, or in any party wall, or in the principal or bearing walls or timbers, or make or suffer to be made on the said premises, any bricks, tiles or other wares, or carry on, or permit to be carried on, any noisy, noxious, or offensive trade or

subject to rent.

Covenants by lessee to pay rent and taxes,

to fence off premises,

to complete houses.

Not to erect any other buildings without license,

or alter plan or elevation,

or carry on noisy, noxious, or offensive trade.

BUILDING LEASE.

manufacture, or permit the said premises to be used for any illegal or immoral purpose, or for a public-house, inn, tavern, or beer-shop, or otherwise for the sale of wine, malt liquors, or spirituous liquors, or do or suffer to be done thereon any act or thing whatsoever which may be an annoyance or disturbance to the lessors or their tenants in the neighbourhood: And also that the lessee will, from time to time and at all times during the said term, well and substantially repair, maintain, cleanse and pave, and in good and substantial repair and condition keep the messuages or dwelling-houses and other buildings so to be erected as aforesaid, and appurtenances belonging thereto, and the said footway in front, and the same so repaired, maintained, cleansed, paved and kept, will quietly surrender and yield up unto the lessors on the determination of the said term: And will pay a reasonable proportion (to be ascertained by such surveyor as aforesaid) of the expense of supporting and repairing all roads, ways, sewers, drains, party walls, watercourses and easements, used or to be used, or capable of being used, in common by the occupiers of the said premises hereby demised, with the occupiers of the adjoining property, except the expense of making the main streets and main sewers, which are intended to be made by and at the expense of the lessors, but including the expense of maintaining, cleansing, and keeping in repair the same when made, unless and until such expense shall be defrayed by or out of rates to be levied for that purpose, which rates the said lessee will be liable to pay under the covenant in that behalf hereinbefore contained: And also will paint twice, in oil, in a proper and sufficient manner, once in every ten years of the said term, the inside of the said messuages and buildings usually painted, or which ought to be painted: And also once in every five years of the said term, the outside of the same, usually painted or which ought to be painted: And further, that it shall be lawful for the workmen of the lessors, or of their tenants or occupiers of houses adjoining or near to the said premises hereby demised, at all reasonable times of the day, to enter into and upon the said demised premises and the messuages and buildings so to be erected as aforesaid, for the purpose of cleansing drains and for repairing any of the adjoining houses as often as occasion shall require: And that the lessors and their tenants shall have free liberty of watercourse in, through and under the said demised

To repair and surrender in good repair at the end of term,

to pay a reasonable proportion of expense of repairing common roads, &c.

to paint inside every ten years, and outside every five years.

That workmen from adjoining houses may enter to cleanse drains, &c.

That lessors may have liberty of watercourse.

premises to carry off the water and sewage from the adjoining or contiguous property: And that the lessee will at all times during the said term, insure and keep insured from loss or damage by fire, the messuages and buildings to be so erected as aforesaid, to the amount of four-fifths at least of the value thereof, such value to be ascertained by such surveyor as aforesaid, whose certificate of value shall be conclusive, in the names of the lessors and lessee (or in such other manner as the lessors shall, on the request of the lessee, approve) in the —— insurance office, or in some other insurance office to be previously approved in writing by such surveyor as aforesaid, and will, from time to time upon the request of the lessors or such surveyor as aforesaid, produce and show to them or him the policy of such insurance and also the receipt for the premium of such insurance for the next ensuing year: And also that he the lessee will, as often as the said messuages and buildings so to be erected as aforesaid, or any of them, shall be destroyed or damaged by fire or other accident, immediately lay out and apply the money to be received by virtue of any such insurance as aforesaid, and also all such other sums of money (if any) as shall be necessary for that purpose, in well and substantially rebuilding, repairing, and reinstating the same under the inspection and to the satisfaction of such surveyor as aforesaid: And also that the lessee will upon every assignment of the said premises hereby demised, or any part thereof, or within twenty-one days thereafter, deliver a notice of such assignment to the lessors or their solicitor, setting forth the names and description of the parties to every such assignment, and the particulars and effect thereof: And also that it shall be lawful for the lessors or their surveyor or agent for the time being, with or without workmen or others, from time to time, and at all reasonable times of the day during the said term, to enter into and upon the said demised premises and the messuages and buildings to be erected thereon as aforesaid, or any part thereof, and inspect and view the condition thereof, and during the last seven years of the said term to take an inventory of the fixtures and other things then in or about the same, and if any defect or want of reparation shall be on any such inspection found and discovered, to give to the lessee, or leave for him at or upon the said premises or some part thereof, notice in writing to make good and restore the same, and that the

BUILDING LEASE.

To insure.

To give notice to lessors of all assignments.

That lessors may enter to view state of repair.

BUILDING LEASE.

lessee will, within six calendar months next after such notice, well and sufficiently make good and restore the same accordingly: PROVIDED ALWAYS, that if the said yearly rent hereby reserved, or any part thereof, shall at any time be unpaid for the space of twenty-one days after the same shall have become due, whether the same shall have been lawfully demanded or not, or in case of the breach or non-observance by the lessee of any of the covenants herein on his part contained, then and in any such case it shall be lawful for the lessors, notwithstanding the waiver of any previous cause or right of re-entry, to enter into and upon the said demised premises and the messuages and buildings so to be erected as aforesaid, or any of them or any part thereof, in the name of the whole, and to repossess, retain, and enjoy the same as of their former estate: PROVIDED ALWAYS, and it is hereby agreed and declared, that if the lessee (including any person or persons in favour of whom an apportionment of rent shall then already have been made under this present proviso, his or their executors, administrators, or assigns) shall at any time or times during the said term hereby granted, assign any one or more of the messuages or tenements so to be erected as aforesaid (not being the whole of the premises then vested in him), then and in every such case such surveyor as aforesaid shall, if and when requested so to do by any party entitled under such assignment, determine what portion of the rent hereby reserved shall thenceforth be payable in respect of the premises comprised in such assignment, and what portion thereof shall thenceforth be payable in respect of the premises vested in the person making the same assignment, and a memorandum of such apportionment, signed by the lessors or the said surveyor, shall be endorsed on these presents, and the counterpart thereof or other the document under which the apportioned rent shall be payable, and from and after the endorsement of such memorandum the person to whom such assignment shall be made shall hold the premises comprised therein, subject only to the payment of the apportioned rent so to be made payable in respect thereof as aforesaid, and to the observance and performance of the covenants and conditions herein contained on the part of the lessee to be observed and performed so far as the same shall be applicable to the last-mentioned premises in the same manner as if a separate lease of the same premises had been granted

Power of re-entry on non-payment of rent or breach of covenants.

Proviso for apportionment of rent between the several houses on assignment.

BUILDING LEASE.

to him or them, at and under such last-mentioned apportioned rent, covenants, and conditions, so far as the same shall be applicable as aforesaid respectively, and the person making such assignment as aforesaid shall hold the premises remaining vested in him, subject only to the payment of the apportioned rent so to be made payable in respect thereof as aforesaid, and to the observance and performance of the covenants and conditions herein contained on the part of the lessee so far as the same shall be applicable to the last-mentioned premises, in the same manner as if a separate lease of the same premises had been granted to him, at and under such last-mentioned apportioned rent, and subject to such covenants and conditions so far as the same shall be applicable as aforesaid respectively, and so *toties quoties* upon every subsequent division by assignment of part of the premises held under an apportioned rent: PROVIDED ALSO, and it is hereby agreed and declared, that no apportioned rent shall in any case be less than the sum of thirty shillings or exceed one-fifth part of the rack rent value of the land in respect whereof the same shall be apportioned, and the buildings erected or to be erected thereon, when finished and fit for habitation, and that until all the said messuages and tenements hereinbefore covenanted to be erected shall be completed and rendered fit for habitation, the lessee shall only be entitled to apportionment in respect of such of the said messuages or tenements as shall be so completed and rendered fit for habitation: (*Covenant by lessors for quiet enjoyment, and meaning of "lessor" and "lessee," supra*, p. 61).

IN WITNESS, &c.

No. XVIII.

LEASE OF PREMISES FOR MAKING AND SELLING CEMENTS.

LEASE *of a* MANUFACTORY *and* PREMISES *for* CARRYING *on the* BUSINESS *of making and selling* CEMENTS.

Parties.

THIS INDENTURE, made, &c., BETWEEN A. B. of, &c. (hereinafter called "the lessor"), of the one part, and C. D. of, &c. (hereinafter called "the lessee"), of the other part, WITNESSETH,

LEASE OF PREMISES FOR MAKING AND SELLING CEMENTS.

that in consideration of the rent and royalties hereinafter reserved, and of the covenants hereinafter contained, and on the part of the lessee to be observed and performed, the lessor hereby grants and demises unto the lessee: FIRST, ALL that tenement chiefly used as an engine house, situate in and fronting —— Street, in the city of ——, which said premises are more particularly delineated in the map or plan drawn in the margin of the first skin of these presents, and therein coloured blue: AND THE USE and enjoyment of all the machinery, fixtures, implements, utensils, and things which now are in or upon the said premises: AND SECONDLY, ALL and singular the manufactories, buildings, boiler houses, kilns, erections, offices, buildings, and premises, situate between —— Street and —— Quay, in the said city of ——, which said premises secondly hereinbefore described are more particularly delineated in the said map or plan, and therein coloured red: AND THE USE and enjoyment of all the machinery, fixtures, implements, utensils, and things which now are in or upon the said premises secondly hereinbefore described (EXCEPTING nevertheless and reserved unto the persons in favour of or to whom the same have previously to the date of these presents been excepted and reserved, all the rooms which form the upper storey of the several buildings hereby demised, and the absolute use and enjoyment thereof, whether for the purpose of business or otherwise howsoever, and unto the same persons and their servants, workmen or any other persons on their behalf, and (as to the piece of land coloured brown in the said map, either on foot, or by means of carts or other vehicles, horses or other animals), full and free right and liberty of ingress, egress, regress, passage, and way at all times over the said piece of land coloured brown on the said plan from the point at which the said piece of land adjoins the —— Quay, and by all the other internal and external passages and ways by which the said rooms respectively are or can be now approached from the said street from the point aforesaid): TO HOLD the said premises unto the lessee for the term of fifteen years from the 25th day of March next: YIELDING AND PAYING during the said term the clear yearly rent of £200: AND ALSO YIELDING AND PAYING during the said term a royalty of —— per bushel in respect of all cements which shall be made or manufactured and sold by the lessee, or any person on his behalf, either on

Lessor demises to lessee.

Parcels.

Use of machinery, &c.

To hold to lessee for fifteen years, at yearly rent,

and subject to royalties for cements made and sold.

LEASE OF PREMISES FOR MAKING AND SELLING CEMENTS.

the premises hereby demised, or in any other place or places whatsoever, such rent and royalties to be paid by equal quarterly payments on the —— day of ——, the —— day of ——, the —— day of ——, and the —— day of ——, clear of all deductions (except the property or income tax), the first quarterly payment of the said rent and royalties respectively to be made on the —— day of —— next: AND THE LESSEE hereby covenants with the lessor in manner following (that is to say): THAT the lessee will pay the rent and royalties hereby reserved at the times and in manner aforesaid, and will also pay all present and future taxes, charges, rates, and assessments payable in respect of the said premises hereby demised, by authority of parliament or otherwise (except the property or income tax): AND ALSO will, at all times during the said term of fifteen years, carry on within the said city of —— the business of making or manufacturing cements, and selling the same there and elsewhere to the best possible advantage: AND ALSO will, at all times during the said term, keep proper books of account on the said premises hereby demised, or on some part thereof, and shall from time to time make such entries therein as shall clearly show the quantity of cement which shall from time to time be manufactured and sold by the lessee, or any person on his behalf, and also the amount of royalties which shall from time to time become payable in respect thereof, and also all other matters which ought to be entered in such books in relation to the said business; AND ALSO will, on the first day of every month during the said term, at his own expense, supply the lessor with a proper and faithful account in writing of all the cements which shall have been manufactured and sold as aforesaid during the then preceding month, together with all vouchers and such other evidence as may be required in order clearly to show the accuracy of such account, and shall, if and when required so to do by the lessor, further verify every such account by the statutory declaration of the lessee: AND that in case the said rent and royalties hereby reserved, or any of them, or any part thereof respectively, shall at any time or times during the said term, fail to be paid at the times and in the manner hereinbefore provided for this purpose, then (in addition to the powers of distress and entry which he may possess independently of any special clause to this effect) it

Covenant by lessee to pay rent and royalties,

and to pay rates and taxes,

to carry on business of making and selling cements during the term,

to keep books of account,

to supply accounts.

Power of distress.

LEASE OF PREMISES FOR MAKING AND SELLING CEMENTS.

shall be lawful for the lessor, into or upon the said premises hereby demised, or any part thereof, or any other premises wherein or whereupon the said business may, for the time being, be carried on, to enter and distrain for the same rent and royalties so in arrear, and the distress or distresses there found to impound and detain, sell and dispose of in such manner as landlords are by law authorized to do in respect of arrears of rent reserved upon common demise, to the intent that the lessor may by such distress or distresses be from time to time satisfied, all such rent and royalties as may be so unpaid as aforesaid, and all costs and expenses occasioned by non-payment or default in payment thereof: AND ALSO that the lessee will insure, and at all times during the said term keep insured, all the cements and other stock in trade which shall for the time being be upon the said premises hereby demised, or any other such premises as aforesaid, or which otherwise may be engaged or employed in the said business, in some insurance office or offices in London or Westminster: AND ALSO in the event of any such cements or stock in trade being destroyed by fire, will lay out the moneys which shall arise by reason of the insurance thereof in replacing all such cements and stock in trade as may be so destroyed: AND ALSO will, at all times during the said term, keep in good and substantial repair and condition, all and singular the buildings and machinery, utensils, implements and things hereby demised, and all other the erections and buildings which shall at any time during this demise be erected or set up upon the said premises, and the same in such good and substantial repair will, at the expiration or sooner determination of the said term, peaceably and quietly surrender and yield up to the lessor (reasonable wear and tear thereof in the meantime only excepted): AND ALSO will permit the lessor, with or without workmen and others, at any time or times during the said term, into and upon the said premises, or any part or parts thereof, to enter and view and examine the state and condition thereof, and if any decays, defects, or wants of reparation shall be found upon such view, to give or leave a notice in writing at or in the said demised premises, or any part thereof, to repair and amend the same within the space of one calendar month next following, within which space of one calendar month next after every such notice the lessee will repair and amend the same decays, defects,

Covenant by lessee to insure,

to keep in repair,

and to deliver up premises in good repair at expiration of term.

Power of lessor to enter and view condition of premises.

and wants of reparation accordingly: PROVIDED ALWAYS, and it is hereby declared, that if the said rent and royalties hereby reserved, or any of them, or any part thereof respectively shall be in arrear for the space of fourteen days next after any of the said days on which the same ought to be paid as aforesaid, whether the same shall or shall not have been legally demanded, or if there shall be any breach or non-observance of any of the covenants hereinbefore contained, and on the lessee's part to be observed and performed, or if the lessee shall become bankrupt, or shall compound or arrange with his creditors, or suffer his effects to be taken in execution, then and in any of the said cases it shall be lawful for the lessor, into and upon the said demised premises, or any part thereof, in the name of the whole, to re-enter, and the same to have again, retain, repossess, and enjoy, as in his former estate. (*Covenant by lessor for quiet enjoyment, and meaning of "lessor" and "lessee," supra*, p. 61.)

IN WITNESS, &c.

LEASE OF PREMISES FOR MAKING AND SELLING CEMENTS.

Power of re-entry on non-payment of rent or royalties, or in breach of covenants, &c.

Covenant by lessor for quiet enjoyment.

No. XIX.

UNDERLEASE *for the whole of the term granted by the original Lease, except ten days, at an* IMPROVED RENT. UNDERLESSEE *covenants to observe all the covenants in the original Lease* (*i*).

UNDERLEASE.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*lessor*), of the one part, and C. D. of, &c. (*lessee*), of the other part. WHEREAS by an indenture of lease, dated, &c. (*date and parties*), the messuage and hereditaments hereinafter described and intended to be hereby demised were demised by the said —— unto the said A. B. for the term of eighty years computed from the —— day of ——, at the yearly

Parties.

Recital of lease.

(*i*) The above Precedent is adapted to a case where it is intended that the underlessee shall take upon himself precisely the same obligations as are imposed on his lessor by the superior lease, so as to be a complete indemnity to the latter.

UNDERLEASE.

rent of £——, and subject to the lessee's covenants therein contained: AND WHEREAS the said A. B. has agreed to grant to the said C. D. an underlease of the said premises in the manner hereinafter expressed, NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration of the rent hereinafter reserved and the covenants of the said C. D. hereinafter contained, the said A. B. hereby demises unto the said C. D. ALL, &c. (*parcels*), AND all other (if any) the premises comprised in the said indenture of lease, TO HOLD unto the said C. D. for all the residue now unexpired of the said term of —— years granted by the said indenture of lease, except the last ten days of the said term, YIELDING AND PAYING, &c. (*reservation of rent*). AND the said C. D. hereby covenants with the said A. B. that he, the said C. D., his executors, administrators, or assigns, will pay the rent hereby reserved, at the time and in manner aforesaid: AND ALSO will at all times during the term hereby granted observe and perform all the covenants and conditions contained in the said recited indenture of lease, and on the lessee's part to be observed and performed, except the covenant for payment of the rent thereby reserved, and will keep indemnified the said A. B., his executors, administrators, and assigns, from and against the said covenants and conditions and all claims and demands in respect thereof: AND in particular will, at the expiration or sooner determination of the term hereby granted, deliver up the said premises to the said A. B., his executors, administrators, or assigns, in the same state and condition as the same ought to be in at the end of the term granted by the said indenture of lease under the covenant in that behalf entered into by the said A. B. in and by the said indenture, and so that the said A. B., his executors, administrators, or assigns, shall not under such covenant have to pay any moneys to his or their landlord, or to suffer any loss or injury on account of repairs or dilapidations: (*Proviso for re-entry for non-payment of rent or breach of covenants, supra*, p. 61, *substituting for* "*lessor*" the said A. B., his executors, administrators, or assigns, *and for* "*lessee*" the said C. D., his executors, administrators, or assigns): AND the said A. B. hereby covenants with the said C. D., that he the said A. B., his executors, administrators, or assigns, will at all times pay the said yearly rent of £—— reserved by the

Agreement to grant underlease.

Witnessing part.

Underlease.

Rent.

Covenants by underlessee to pay rent above reserved and to observe covenants in superior lease and indemnify underlessor therefrom,

and in particular to deliver up premises at end of term in the state in which same ought to be in according to superior lease.

Covenant by underlessor to pay superior rent,

said indenture of lease, and keep the said C. D., his executors, administrators, and assigns, indemnified therefrom, and from all actions, claims, and demands in respect thereof: AND ALSO that the said C. D., his executors, administrators, or assigns, paying the rent hereby reserved, and observing and performing the covenants herein contained, and on his or their part to be observed and performed, shall and may peaceably and quietly possess and enjoy the premises hereby demised during the term hereby granted without any interruption by the said A. B. or any person lawfully or equitably claiming from or under him: AND the said A. B. hereby acknowledges the right of the said C. D. to production and delivery of copies of the said indenture of lease, and undertakes for the safe custody thereof.

UNDERLEASE.

and for quiet enjoyment.

Acknowledgment of right of underlessee to production of superior lease.

IN WITNESS, &c.

No. XX.

AGREEMENT *for a* LEASE *of a* HOUSE IN TOWN *in consideration of a* PREMIUM. *The* LESSOR, *who is a* BUILDER, *agrees to complete the house before a certain day.*

AGREEMENT FOR LEASE BY BUILDER.

MEMORANDUM OF AGREEMENT, dated the —— day of ——, BETWEEN A. B. of, &c., of the one part, and C. D. of, &c., of the other part, whereby it is agreed as follows:—

Parties.

The said A. B. agrees, in consideration of the sum of £—— by way of premium to be paid to him by the said C. D., as hereinafter mentioned, and also in consideration of the rent and lessee's covenants to be reserved and contained by and in the lease hereinafter mentioned, to grant to the said C. D. a lease of all that, &c. (*describe house*) for a term of —— years, to be computed from the —— day of —— next, at the yearly rent of £——, payable quarterly on the usual quarter days, such lease to contain the covenants, clauses, and conditions, and be in the form set out in the first schedule hereto: AND the said A. B. also agrees to complete the said messuage in accordance with the

Agreement to grant lease,

to be in form set out in schedule.

Agreement by lessor to

AGREEMENT FOR LEASE BY BUILDER.

complete house.

Lessee to pay premium.

Deposit to be forfeited on non-performance by lessee of his part of agreement.

specifications set out in the second schedule hereto, on or before the —— day of —— next: And the said C. D. agrees to accept the said lease, and to pay the said premium of £—— in manner following, viz., the sum of £—— on the signing hereof, and by way of deposit, and the remaining sum of £—— on the —— day of —— next, on which day the lease and counterpart shall be executed: And it is agreed that the intended lease and counterpart shall be prepared by the lessor's solicitor at the cost of the lessee, who shall not require any evidence of the lessor's title. And it is also agreed that if the said C. D. shall not perform his part of the above conditions the sum of £—— paid by him shall be forfeited to the said A. B.

As witness, &c.

The First Schedule.

(*setting out the intended lease*).

The Second Schedule.

(*specification of work to be done*).

No XXI.

OF A FARM FROM YEAR TO YEAR.

LEASE *of a* Farm *from* Year *to* Year (*adapted to a Lady-day or Michaelmas taking*) (*k*).

Parties.

Agreement to let and take.

MEMORANDUM OF AGREEMENT, made the —— day of ——, 18—, Between A. B. of, &c. (*landlord*), of the one part, and C. D. of, &c. (*tenant*), of the other part.

1. The said A. B. (hereinafter called "the landlord") hereby agrees to let, and the said C. D. (hereinafter called "the

(*k*) It will be borne in mind, that the terms of a tenancy vary according to the custom of the country.

OF A FARM FROM YEAR TO YEAR.

tenant") hereby agrees to take, THE farm and lands situate in the parish of ——, in the county of ——, called the —— Farm, particularly described in the schedule hereto, the tenancy to be from year to year, commencing on the —— day of ——, and determinable at the end of any year by a year's notice to quit given by either party (*l*); AT the yearly rent of £——, payable by equal half-yearly payments on the ——day of ——, and the —— day of ——, in every year, the first payment thereof to be made on the —— day of —— next [and at the further yearly rent of £50 for every acre of meadow or pasture land which shall be broken up or converted into tillage without the consent of the landlord contrary to the provision in that behalf hereinafter contained, and so in proportion for any less quantity than an acre, such further rent to be payable on the half-yearly days aforesaid].

Exceptions and reservations.

Timber, &c.

2. ALL timber and timber-like trees, tellars, pollards, and saplings, gravel, and stone in and upon the said lands are excepted and reserved out of this demise; AND the landlord shall be at liberty by himself, his agents, and servants, to enter into and upon the said lands at all reasonable times for the purpose of marking, felling, cutting, digging, and carrying away the same, paying reasonable compensation to the tenant for all damage done thereby.

Game.

3. THE right to kill and take game, sport and fish over the said lands is also reserved to the landlord, and all persons authorized by him in that behalf, but subject as to ground game to the provisions of the Ground Game Act, 1880 (*m*).

Mutual agreements to observe conditions and agreement by landlord for quiet enjoyment by tenant.

4. THE PARTIES hereto hereby mutually agree to observe the conditions hereinafter expressed, and the landlord further agrees that the tenant paying the rent and observing the said conditions on his part, may quietly hold and enjoy the premises hereby demised without any interruption by the landlord or any person rightfully claiming under him.

(*l*) If a half-year's notice to quit is stipulated for, substitute for "a year's notice" a "half-year's notice."

(*m*) If only a concurrent right to sport is to be reserved, substitute as follows: The right to shoot, fish, or otherwise sport over the said lands is reserved to the landlord, and all persons authorized by him, but this reservation shall not prevent the tenant from also shooting, fishing, or sporting thereon.

OF A FARM FROM YEAR TO YEAR.

Tenant to pay rent, rates and taxes.

5. THE TENANT shall pay the rent hereby reserved at the time and in the manner aforesaid, and shall also pay all rates, taxes, and assessments payable in respect of the said premises during the tenancy, except the land tax and the landlord's property tax and the tithe rentcharge (*m*), and no deduction is to be made from the rent in respect thereof.

To pay outgoing tenant according to valuation.

6. UPON taking possession of the farm the tenant shall pay or allow to the outgoing tenant according to a valuation for the matters and things in respect whereof such outgoing tenant is entitled to payment or allowance according to the terms of his tenancy (*n*).

To reside in the farmhouse and not to assign or underlet.

7. THE TENANT shall reside in the farmhouse, and shall not assign or underlet the said premises without the landlord's consent in writing.

Repairs to be done by tenant.

8. THE TENANT shall keep the farmhouse and buildings (except the main walls, main timber and roof) in good and tenantable repair, and so leave the same at the end of the tenancy. He shall also from time to time, at the proper season, well and sufficiently lay, cut, repair, and keep repaired, all hedges, mounds, rails, gates, and fences, and open, scour, cleanse, and throw all ditches, watercourses, and drains, and so leave the same at the end of the tenancy.

To preserve winged game.

9. THE TENANT shall preserve the game hereby reserved to the landlord, and (subject to the provisions of the Ground Game Act, 1880) shall not allow any person to shoot or sport over the said lands without the landlord's permission. He shall also sign all notices not to trespass required by the landlord.

To preserve trees.

10. THE TENANT shall not fell, lop, or top, or suffer to be felled, lopped, or topped, any timber or other trees on the said lands without the landlord's consent, except that he may lop pollards usually lopped, but shall preserve all such trees from spoil or damage by cattle or otherwise. He shall also at his own expense, plant, fence, and protect all fruit trees supplied by the landlord.

To prevent new footpaths from being

11. THE TENANT shall do his best to prevent new footpaths

(*m*) Tithe rentcharge is payable by the owner, and any contract between an owner and occupier for payment by the latter is void. Tithe Act, 1891 (54 Vict. c. 8), s. 1.

(*n*) Sometimes a more elaborate arrangement is necessary. See the special clause as regards valuations between outgoing and incoming tenant in Precedent No. XXII., *infra*.

OF A FARM FROM YEAR TO YEAR.

from being made over any of the said lands, or any waste from being enclosed on the footpaths of the said lands.

made or waste from being enclosed.

12. THE TENANT shall not mow any meadow or pasture land for hay more than once in the year, nor later than usual and customary in the neighbourhood, and shall not break up or convert into tillage any meadow or pasture land without the landlord's written consent. He shall not take two white crops in succession, and generally shall manage and cultivate the farm in a husbandlike manner, so as not to impoverish any part thereof, and shall leave the same at the end of the tenancy in good heart and condition.

Not to mow more than once a year, not to break up pasture land under a penalty by way of additional rent. Not to take two white crops in succession and cultivate properly.

13. THE TENANT shall consume and spend on the said farm and lands all the hay, straw, green crops, and fodder, dung and manure produced and made thereon; the dung and manure to be spread over the lands in a husbandlike manner. EXCEPT that he shall be at liberty to remove hay and straw, if for every ton of hay or straw so removed he brings and consumes on the said farm at least three tons of good rotten dung or other manure of equal goodness.

To consume all hay, &c. on farm, but may remove hay on bringing in other manure.

14. (*If the taking is a Lady-day one.*) THE TENANT shall in the last year of the tenancy prepare and sow in proper season with wheat such portion of the arable land as shall be in due course for the same, and shall sow good grass seed with the last year's Lent crops, and harrow in the same: He shall also permit the landlord or incoming tenant to enter upon the arable land (except such parts thereof as shall be in due course for wheat or in clover or root crops), at any time after the 1st day of January preceding the end of the tenancy, for the purpose of preparing the same for the next year's crops: He shall also at the end of the tenancy leave for the landlord or incoming tenant all the hay, straw, and roots remaining unconsumed, he, the tenant, being paid or allowed for the matters and things aforesaid as hereinafter is provided.

In last year of tenancy to sow arable with wheat, and grass seeds with Lent corn. Incoming tenant may on last year enter on parts of arable to prepare for crops. Hay, &c. to be left for incoming tenant.

(*If the taking is a Michaelmas one.*) THE TENANT shall stack in the barns and rickyards in the last year of the tenancy all the corn, grain, and hay produced on the said premises (the corn and grain to be there thrashed out, and all the hay, straw, chaff, stubble, and fodder to be there consumed by cattle in a husbandlike manner, and the dung, manure, compost, or soil therein arising to be left on the premises), for which purpose the tenant shall have the use of such of the barns and yards as may be

To stack in barns, &c. produce of last year.

OF A FARM FROM YEAR TO YEAR.

necessary until the 1st day of May next after the end of the tenancy: And in the last year of the tenancy the landlord or his incoming tenant shall be at liberty to enter upon the lands for a wheat season so soon as the crop for that year is cleared off, in order to prepare the same for such season, and may also sow seeds among the Lent or summer corn, which the tenant shall harrow in: And the tenant shall also leave for the landlord or his incoming tenant all the hay, straw, and roots remaining unconsumed, being paid or allowed for the same at a spending price.

Incoming tenant may enter in last year of tenancy on parts of farm.

Repairs to be done by landlord.

15. The landlord shall during the tenancy keep in good and tenantable repair the main walls, main timbers, and roofs of the farmhouse and buildings upon receiving notice from the tenant that any such repairs are wanted (*o*). He shall also find sawn timber in the rough for all repairs of fences and other external repairs to be done by the tenant. He shall also keep the farmhouse and buildings insured against loss or damage by fire in a sum sufficient to cover the value thereof, and all money received under such insurance shall be forthwith laid out in rebuilding and reinstating the premises in respect of which the same shall have been received.

Insurance against fire.

16. (*If the taking is a Michaelmas one.*) The landlord or the incoming tenant shall take the turnips and fallows at the end of the tenancy, and shall pay the tenant for labour and seeds properly performed and expended upon such turnips and fallows.

Allowances to be made to tenant at the end of tenancy.

17. At the end of the tenancy the landlord or the incoming tenant shall allow to the outgoing tenant for the following matters and things:—

(*If the taking is a Lady-day one.*) For the wheat and grass seeds sown by him during the last year, and for the cost of harrowing in the seeds, and for the winter feed of the arable lands given up by him to the landlord or incoming tenant:

(*If the taking is a Michaelmas one.*) For the labour and seed properly performed and expended upon the turnips and fallows to be taken to by the landlord or incoming tenant, as before provided:

(*o*) See Makin *v.* Watkinson, L. R. 6 Ex. 25.

(*Whether the taking be a Lady-day or Michaelmas one.*) OF A FARM FROM YEAR TO YEAR.

For the proportionate value of such of the tillages and manurings done during the last two years of the tenancy as shall remain unexpended and for the benefit of the landlord or the incoming tenant (*p*):

For the unconsumed hay, straw, and roots at a spending price.

Conditions of re-entry.

18. If any rent hereby reserved shall be in arrear for forty days, whether payment thereof shall have been legally demanded or not, or if there shall be any breach of any of the conditions herein contained and on the tenant's part to be observed or performed, or if the tenant shall become bankrupt, then and in either of such cases the landlord may re-enter and determine the tenancy without giving any notice to quit.

Account and valuation at end of term.

19. At the end of the tenancy an account shall be taken between landlord and tenant as follows: 1st, a valuation shall be made of the several matters and things which are hereinbefore agreed to be paid or allowed for by the landlord or his incoming tenant, and the amount of such valuation shall be debited to the landlord; and 2ndly, the valuers shall determine whether any and (if so) what sum of money ought to be paid or allowed by the tenant to the landlord for any breach by the tenant of the terms and conditions of the tenancy, or in respect of the condition in which he has left the farm, and the same, together with any arrears of rent or of rates and taxes which may be owing from the tenant, shall be debited to the tenant: And the balance which upon such account shall appear due from one party to the other shall be forthwith paid with interest thereon after the rate of £4 per cent. per annum, computed from the end of the tenancy.

Mode of valuation.

20. Every valuation under these presents shall be made by two indifferent persons, one to be named by each party interested, and in case of their disagreement, then by an umpire, to be chosen by the valuers previously to entering upon the consideration of the matters referred to them. The valuers or their umpire shall have power to decide any question which may arise

(*p*) It is apprehended that under sect. 5 of the Agricultural Holdings (England) Act, 1883, this would be considered as substituted for the compensation provided by that Act for manurings.

OF A FARM FROM YEAR TO YEAR.

in the course of their valuation, and in particular any questions as to what matters or things are proper subjects of valuation or allowance according to the true intent and meaning of this agreement. Every reference to valuers under this agreement shall be deemed a reference to arbitration within the provisions of the Arbitration Act, 1889.

In witness, &c.

The Schedule above referred to.

No. XXII.

CLAUSES AS TO VALUATIONS.

SPECIAL CLAUSE *as regards* Valuations *between an* outgoing *and* incoming Tenant.

Recital of agreement with outgoing tenant as to allowances at the end of tenancy according to valuation.

Whereas the farm is at present in the occupation of X. Y. (hereinafter called the outgoing tenant), under an agreement dated the —— day of ——, 18—, and he has received notice to quit on the —— day of —— next, and by the said agreement it is provided that the landlord or his incoming tenant shall at the end of the said tenancy pay or allow to the outgoing tenant, according to valuation, for the following matters and things, namely—(*specifying them*): And it is also provided that at the end of the tenancy an account shall be taken between the landlord and outgoing tenant as follows: 1st, that a valuation shall be made of the several matters and things which are thereinbefore agreed to be paid or allowed for by the landlord or his incoming tenant, and the amount of such valuation shall be debited to the landlord; and 2ndly, that the valuers shall determine whether any and (if so) what sum of money ought to be paid or allowed by the outgoing tenant to the landlord for any breach by the tenant of the terms and conditions of the tenancy, or in respect of the condition in which he has left the farm, and the same together with any arrear of rent or of rates and taxes owing from the tenant shall be debited to the outgoing tenant, and that the balance which upon such account shall appear due from one party to the other shall be forthwith paid with interest

thereon after the rate of £4 per cent. per annum, computed from the end of the tenancy (*q*): NOW IT IS HEREBY AGREED between the landlord and tenant under this agreement (hereinafter called "the incoming tenant"), that whatever sum of money shall under the said recited agreement become payable to or from the outgoing tenant shall be paid or received (as the case may be) by the incoming tenant, and the valuations to be made under the said agreement shall be binding on the incoming tenant: AND IT IS ALSO AGREED that if any sum of money shall by the valuation to be made as aforesaid be awarded to be paid or allowed by the outgoing tenant to the landlord or the incoming tenant for any breach by the outgoing tenant of the terms and conditions of the tenancy or for the state of the farm, and which sum of money shall accordingly be brought into the account, and paid or allowed for as aforesaid, the incoming tenant shall lay out an equal sum on the farm forthwith, or as soon as the same can profitably be laid out thereon: AND whatever sum of money (if any) shall be found owing by the outgoing tenant for arrears of rent or of rates and taxes as aforesaid, and which shall accordingly be brought into the account and allowed for as aforesaid, shall be forthwith applied by the incoming tenant in the payment of such arrears.

CLAUSES AS TO VALUATIONS.

Agreement that incoming tenant shall account with outgoing tenant on the terms of the above recited agreement, and that any money allowed to incoming tenant for the state of the farm shall be laid out by him on the farm.

No. XXIII.

LEASE (*r*) *of a* FARM *for twenty-one* YEARS (*adapted to a Lady-day or Michaelmas taking*).

OF A FARM FOR A TERM.

THIS INDENTURE, made the —— day of ——, 18—, BETWEEN A. B. of, &c. (*lessor*), of the one part, and C. D. of, &c. (*lessee*), of the other part, WITNESSETH and declares as follows:—

Parties.

1. In consideration of the rent and tenant's covenants hereinafter reserved and contained, The said A. B. (hereinafter called

Lease of farm

(*q*) The recital must of course be made to agree with the actual terms of the agreement. It is above assumed that the clauses are the same as those in the new agreement.

(*r*) For variations where the lease is made under a power, &c., see Precedent No. VIII., *supra*, p. 62.

OF A FARM FOR A TERM.

"the landlord") hereby demises unto the said C. D. (hereinafter called "the tenant"), THE farm and lands situate in, &c., the particulars whereof are set forth in the schedule hereunder written: TO HOLD the same unto the tenant from the —— day of ——, for and during the term of twenty-one years thence next ensuing, YIELDING and paying therefor the yearly rent of £—— by equal half-yearly payments on the —— day of ——, and the —— day of ——, in every year, the first payment to be made on the —— day of —— next: AND ALSO yielding and paying the further yearly rent of, &c. (*penal rent*, p. 99, *supra*.)

for twenty-one years.

2 and 3. (*Exceptions and reservations as in Precedent No. XXI.*)

Mutual covenants by tenant and landlord to observe conditions of lease, and by landlord for quiet enjoyment by tenant.

4. THE TENANT hereby covenants with the landlord to pay the rent hereby reserved at the times and in manner aforesaid, and also to observe all the provisions contained in these presents which are or ought to be observed and performed on his part (which provisions are hereinafter referred to as "the tenant's covenants:") AND the landlord hereby covenants with the tenant to observe and perform all the provisions contained in these presents which are or ought to be observed and performed on his part; AND ALSO that the tenant paying the rent hereby reserved, and observing and performing the tenant's covenants, shall and may quietly hold and enjoy the premises hereby demised without any interruption from or by the landlord or any person rightfully claiming from or under him.

Covenants by tenant.

To pay rent, rates, and taxes.

5. THE TENANT shall pay (in addition to the rent hereby reserved) all rates, taxes, and assessments whatsoever which shall, during the tenancy, be payable in respect of the demised premises, except the land tax and landlord's property tax, and the tithe rentcharge.

Not to assign without license and to reside in farmhouse.

6. THE TENANT shall, at all times during the said term, reside in the farmhouse, and he shall not assign or underlet the premises hereby demised, or any part thereof, without the consent in writing of the landlord [unless such consent shall be unreasonably withheld].

To repair.

7. THE TENANT shall keep the farmhouse and buildings hereby demised in good and substantial repair, and so leave the same at the end of the tenancy (*s*). [In particular he shall paint, once

To paint out-

(*s*) If the landlord is to insure, the words "damage by accidental fire and tempest excepted" should be added here.

in every five years of the said term, all the outside wood and ironwork of the said farmhouse and buildings which have been usually painted, and once in every seven years the inside of the said house and buildings with two coats in oil of the best quality.] THE TENANT shall also from time to time at the proper season well and sufficiently lay out, repair, and keep repaired all hedges, gates and fences, and open, scour, cleanse and throw all ditches, watercourses and drains, and so leave the same at the end of the tenancy.

side once every five years, and inside every seven years.

8. THE TENANT shall at all times during the said term keep the farmhouse and farm buildings insured against loss or damage by fire, in the joint names of the landlord and tenant, in the —— insurance office, or in some other insurance office approved of by the landlord, in a sum of money sufficient to cover the value of the said house and buildings, and shall for that purpose pay all premiums and sums of money payable in respect of such insurance, and shall from time to time, when required, produce to the landlord or his agent the policy of such insurance and the receipt for every such premium and sum of money, and all moneys which shall be received under or by virtue of any such insurance shall be forthwith laid out and applied in the rebuilding or reinstating of the premises, in respect of which the same shall be paid, and if the same shall be insufficient for that purpose, the deficiency shall be paid by the tenant out of his own money (*t*).

To insure against fire.

9 to 13. (*Covenant to preserve game, to preserve trees, to prevent new footpaths, &c., not to mow more than once a year, not to break up pasture, not to take two white crops in succession, &c., and to cultivate properly, to consume hay, &c., on farm, as in Precedent No. XXI., clauses* 9 *to* 13, *supra*, pp. 100, 101.)

14. IF THE LANDLORD shall, at any time during the said term, by agreement with the lessee, expend any money in draining, building, or other permanent improvements on the said premises, the lessee shall, during the residue of the said term, pay to the lessor by way of additional rent, interest on the sum so expended after the rate of £5 per cent. per annum (*u*).

To pay 5 per cent. on money expended in draining, building, and other improvements.

(*t*) This covenant will be omitted if the arrangement is that the landlord shall insure.

(*u*) It is apprehended that this covenant is quite consistent with sect. 4 of the Agricultural Holdings (England) Act, 1883.

OF A FARM FOR A TERM.

Course of cultivation to be adopted in last five years.

15. THE TENANT shall not, during any one of the last five years of the term hereby granted, plant more than one-fifth part of the arable land with wheat, nor more than one-fifth part thereof with barley or oats, or other exhausting crop, but shall have during each such year at least one-fifth part of the arable land in old seeds, and at least one-fifth part in turnips or green crops, and at least one fifth part in clover or sainfoin, such seeds, turnips, green crops, clover and sainfoin, to be respectively eaten off the land.

16. THE TENANT shall, in the last year of the tenancy, prepare and sow, &c., *or* THE TENANT shall stack, &c. (*as in Precedent No. XXI., clause No.* 14, *supra*, pp. 101, 102, *according as the taking is a Lady-day, or Michaelmas one*).

Landlord to find rough timber for tenant's repairs.

17. THE LANDLORD shall provide and allow to the tenant sufficient timber in the rough for all repairs which shall be required to be done by him under his covenants hereinbefore contained, unless such repairs shall be rendered necessary by any wilful waste or neglect of the tenant, in which case the tenant shall provide such timber at his own expense.

To insure.

[18. THE LANDLORD shall keep the farmhouse and farm buildings insured against fire, in a sum sufficient to cover the value thereof, and all moneys received under such insurance shall be forthwith applied in reinstating the premises in respect of which the same shall have been received, and if the said moneys shall be insufficient for that purpose, then to pay the deficiency out of his own moneys (*x*).]

19. (*If the taking is a Michaelmas one, insert covenant that landlord or incoming tenant is to take to turnips and fallows as in Precedent No. XXI., clause No.* 16, *supra*, p. 102.)

20. (*Allowances to be made to tenant at end of tenancy, as in Precedent No. XXI., clause No.* 17, *supra*, p. 102.)

Power of re-entry.

21. IF any rent hereby reserved shall remain unpaid for the space of twenty-one days after the time hereby appointed for payment thereof, whether the same shall have been lawfully demanded or not, or if there shall be any breach of any of the tenant's covenants, or if the tenant shall become bankrupt or compound or make an arrangement with his creditors, then and in any of the said cases the landlord may re-enter into and

(*x*) This will be omitted if the tenant insures.

upon the premises hereby demised, or any part thereof, in the name of the whole, and the same have again, repossess and enjoy as in his former estate. OF A FARM FOR A TERM.

22, 23. (*Provisions for valuation, as in Precedent No. XXI., clauses* 19, 20.)

24. Where the context allows, the expressions "the landlord" and "the tenant" in these presents, include besides the said A. B. and C. D. all persons deriving title under them respectively. Meaning of "landlord" and "tenant."

In witness, &c.

The Schedule above referred to.

No. XXIV.

LEASE *of a* Farm *for* Twenty-one Years (*another form*), *leaving the tenant unrestricted as to the mode of cultivation until the last four years of the term, or until notice from landlord* (*y*). OF A FARM FOR A TERM.

THIS INDENTURE, &c. (*same as last Precedent down to end of clause* 7, *then covenants to preserve game, if desired, and not to fell trees, and to preserve footpaths, as in Precedent No. XXI., clauses* 9 *to* 11, *supra*, p. 100, *and then proceed as follows*).

12. During the last four years of the said term the tenant shall bring the arable lands into the four-course system of husbandry practised in Norfolk, so that in the last year of the term there shall be as nearly as the sizes of the fields will admit one-fourth in winter corn or pulse, upon olland or grass of one year's lying; one-fourth in a root crop, of which not more than one-fourth shall be mangold-wurzel, and not more than one-tenth in white turnips; one-fourth part in barley or other spring corn; and the remaining one-fourth in olland or grass of one During last four years tenant to adopt four-course system of husbandry.

(*y*) This Precedent is on the principle of the form of lease known as Lord Leicester's Lease.

OF A FARM FOR A TERM.

year's lying; and he shall not suffer any hemp, mustard, coleseed, or clover trefoil, or other artificial grass to stand or grow for a crop of seed in the last four years of the term.

(*Or*)

DURING the last four [*or* five] years of the said term the tenant shall adopt the system of husbandry next hereafter described (that is to say,) (*describe the system of husbandry to be adopted*).

Landlord may by notice require tenant to adopt four-course system.

13. THE landlord may at any time give notice in writing to the tenant requiring him at the expiration of four [*or* five] years from the date of such notice to adopt the system of husbandry described in clause 11, and in such case the tenant shall adopt the same accordingly.

Further conditions to be observed during last four years, &c.

14. DURING the last four [*or* five] years of the said term, or previously thereto if the system of husbandry described in clause 11 shall have become obligatory on the tenant by notice as aforesaid, the tenant shall be bound to observe the following conditions also (that is to say),

Tenant to consume hay, &c., on farm.

(1.) He shall consume on the farm all hay, straw, chaff, greencrops, turnips, and mangold-wurzel (except that grown in the last year of the said term), and spread the manure over the lands in a husbandlike manner.

Not to mow more than once, nor two years in succession.

(2.) He shall not mow any of the meadow or pasture land more than once in the year, nor two years in succession.

To cut fences, &c.

(3.) He shall cut and scour fences and ditches as required by the lessor or his agent, open, drain, and cleanse all watercourses and drains, and keep out-falls of water clear, level and spread ant and mole hills, mow thistles, rushes, and weeds before seeding time, and not suffer swine, unless well ringed, to be upon the meadow land.

(*Add any other conditions thought necessary.*)

(*Landlord's covenants, and general provisions, as in last Precedent.*)

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

No. XXV.

LEASE *of* Coal Mines *in* Lancashire (*z*).

OF COAL MINES IN LANCASHIRE.

THIS INDENTURE, made the —— day of ——, 18—, Between A. B. of, &c. (*lessor*), of the first part, and C. D. of, &c., E. F. of, &c., and G. H. of, &c. (*lessees*), of the second part. WITNESSETH and Declares as follows:—

Parties.

1. In consideration of the rents and lessees' covenants hereinafter reserved and contained, the said A. B. (hereinafter called "the lessor"), in exercise of a power for this purpose given to him by an indenture, &c. (*date and parties*), and of all other powers (if any) him hereunto enabling, hereby appoints and demises unto the parties hereto of the second part (hereinafter called "the lessees"), All those mines, beds, veins, and seams of coal and cannel from the surface down to and including the mine, bed, vein, or seam, called the —— mine, as well opened as unopened, lying and being within and under; 1st, the lands situate in the township of ——, in the county of ——, containing together —— acres or thereabout, Cheshire measure, delineated and coloured —— on the plan annexed to these presents, all which lands (as well the surface thereof as the mines thereunder) are comprised in or subject to the uses of the said indenture of settlement; and 2ndly, the lands situate in the said township of ——, containing —— or thereabouts, Cheshire measure, delineated and coloured —— on the said plan, which lands as to the surface thereof belong to —— Esq., but the above-mentioned mines thereunder are comprised in and subject to the uses of the said indenture of settlement: Together with the rights and privileges to be exercised in connection with the said mines and premises hereinafter mentioned: To hold the same unto the lessees from the —— day of ——, for and during the term of forty years thence next ensuing, Subject to the provisions hereinafter contained.

Lease of mines.

Mines under lands belonging to lessor.

And mines under lands not belonging to lessor,

for term of forty years.

(*z*) For variations, see Precedent No. VIII., *supra*, p. 62. If the lease is under the powers of the Settled Land Act, a part of the mining rent must be capitalized. See Precedent No. XXVIII., *infra*.

OF COAL MINES IN LANCASHIRE.

Rights and Privileges to be Exercised or Enjoyed by Lessees (*a*).

Grant of liberty for lessees to work mines.

2. It shall be lawful for the lessees at all times during the term hereby granted to work and get the mines hereby demised, and to manufacture and carry away the produce thereof, and for that purpose and in connection therewith (but subject to the restrictions and conditions hereinafter expressed) to have and exercise in, over, upon or under the lands, under which the said mines lie, (but as regards the lands secondly hereinbefore described, so far only as it is competent for the lessor to grant the same) all necessary and proper easements, rights, and privileges, and in particular to do all or any of the following things (namely)—

To sink pits, &c.

To sink, make, erect, set up, and construct pits, shafts, levels, airways, waterways, engines, machinery, furnaces, kilns, ovens, workmen's cottages, railways, tramways, and other ways, canals, cuts, wharves, erections, and other works, and to use all existing works of the above description.

To deposit coal, &c.

To deposit upon a convenient part of the said lands all coal, cannel, and slack gotten from the said mines, and all earth and spoil brought to the surface therewith, and all materials used in the working thereof.

To appropriate water.

To appropriate and use for any purpose connected with the working of the said mines any water within the said lands, and make and construct reservoirs and ponds for collecting such water, but so that in the exercise of this privilege the lessees shall not deprive any house, mill, or watering place for cattle, of a reasonable quantity of water as before accustomed, and do not in any manner foul, impregnate, or otherwise deteriorate any springs or streams of water, so as to render the same useless and unprofitable.

To get clay, &c., for building.

To get and dig clay, gravel, sandstone, and slate from the said lands, and burn clay into bricks for the purposes of the works hereby authorized, but not for sale.

(*a*) This and the other headings may be inserted or omitted, as the draftsman pleases.

OF COAL MINES IN LANCASHIRE.

Restrictions as to sites for surface works.

3. No pit or shaft shall be sunk, and no building or thing erected or set up, and no other surface operation carried on by virtue of the liberties and privileges above granted in or upon the demesne lands of —— house or any part thereof, nor (without the lessor's consent) upon the site of any house or building, or any courtyard, fold, garden or orchard attached or belonging to any house or building, nor shall any land be taken or occupied for any surface operation, if the same shall be required for working any mines of the lessor not included in this lease, or for the purpose of any of the works connected with such mines, and any other land not so required shall be suitable and convenient and equally available for such surface operations.

Coke ovens to consume their own smoke.

4. No coke ovens shall be erected or set up in such a position that any damage or inconvenience may thereby arise to existing buildings, and all coke ovens shall (as far as is reasonably practicable) consume their own smoke.

Notice to be given before entering on lands, and lessor to be at liberty to object to proposed site.

5. Before taking any land for surface operations, the lessees shall give to the lessor or his agent one calendar month's previous notice in writing, and shall also give a similar notice to the tenants or occupiers of the land proposed to be taken, or leave such notice at their respective usual places of abode, and every such notice shall properly and correctly specify by name or other sufficient designation and by quantity the land proposed to be taken, and the purpose for which the same is required. The lessor or his agent may at any time within one calendar month from the receipt of such notice state his objections (if any) to the proposed site, and the validity of such objections shall be determined by arbitration (*b*).

Lessees may remove movable machinery, &c., within six months after end of lease.

6. The lessees may at any time or times within six calendar months after the end of this lease carry away and dispose of any coal or other minerals which shall have been raised during the said term, and also remove all plant, machinery and utensils upon or under the said lands being in the nature of trade or tenant's fixtures, or other movable things of the lessees, which the lessor shall not elect to purchase under the provision in that behalf hereinafter contained.

(*b*) See the clauses as to the selection of sites for surface operations in the next Precedent, which may be substituted (if desired) for those in the text.

OF COAL MINES IN LANCASHIRE.

Rights reserved to Lessor.

Reservations to lessor.

Liberty for lessor to work other mines and to use the works of the demised mines for that purpose.

7. The following rights, liberties and privileges are reserved to the lessor out of this demise (that is to say), Liberty for him, and any lessee or other person authorized by him in that behalf, to enter into and upon the above-mentioned lands or any of them, and to search for, dig, work, and get all or any of the mines and minerals and other substances under the said lands which are not included in this lease, and for the purposes aforesaid to sink, make, erect, and use such pits, shafts, levels, drains, watercourses, reservoirs, tunnels, buildings, engines, machinery, canals, railways, waggonways, and other ways, works and conveniences upon, through, or under the said lands, and the mines hereby demised, and the workings of the lessees under these presents as shall be necessary or expedient: And also for the purposes aforesaid to use any existing pits or shafts and other works in and upon the said lands not required by the lessees for the purpose of the mines hereby demised: And also to use in common with the lessees any canals, railways, waggonways, and other ways now existing, or which may hereafter be made by the lessees under the authority of these presents, and to cross or intersect any such last-mentioned canals, railways, waggonways, or other ways, with or by any canals, railways, waggonways, or other ways to be made under the liberties and powers hereby reserved: Provided always that the said reserved rights and privileges shall be exercised and enjoyed in such manner as not to hinder or interfere with the rights and privileges of the lessees under these presents: Provided also that if the lessor or any person authorized by him as aforesaid shall use any canal, railway, waggonway, or other way in common with the lessees under the said reserved liberty in that behalf, the lessor or other the person using the same as aforesaid shall pay and contribute a just and fair proportion of the expense of keeping the same in repair and working order, the amount of such proportion to be settled in case of dispute by arbitration: Provided also that fair and proper compensation shall be paid by the lessor or other the persons for the time being exercising the said excepted and reserved rights and privileges to the lessees for all loss, damage, or injury which they may sustain or be put

But in so doing not to interfere with exercise of lessees' privileges,

and to contribute to expense of keeping in repair canals, railways, &c. used in common, and to compensate lessees for damage done in exercise of reserved privileges.

into by reason or in consequence of the exercise thereof, the amount of such compensation to be settled in case of difference by arbitration.

Rents reserved by this Lease.

Certain yearly rent.

8. The certain yearly rent of £—— shall be paid by the lessees to the lessor for and in respect of the mines and premises hereby demised, by equal half-yearly payments on the —— day of ——, and the —— day of —— in every year, the first half-yearly payment to be considered as having become due on the —— day of ——. For and in respect of which certain yearly rent of £——, the lessees may in every year of this demise work and get from or out of the said demised mines and premises such a quantity of coal and cannel as at the rates hereinafter mentioned would yield or pay for that year footage rents equal in amount to the said certain yearly rent of £——. But the said certain rent shall always be paid, whether such quantity shall in fact be gotten or not.

Footage rents.

9. The following footage rents shall be paid by the lessees to the lessor for and in respect of all coal and cannel gotten from or out of the said demised mines and premises over and above the quantity which the lessees are hereinbefore authorized to work and get in respect of the said certain yearly rent of £—— (that is to say); The rent of £—— for every Cheshire acre of one foot in thickness (meaning by the term "Cheshire acre" an acre reckoned after the accustomed measure of 8 yards to the perch or pole), and so in proportion for a greater or less quantity than an acre, and for a greater or less thickness than one foot, of coal and cannel gotten from or out of the mines called the —— Mine and the —— Mine respectively, or either of them; the rent or sum of £—— for every Cheshire acre of one foot in thickness, and so in proportion as aforesaid, of coal and cannel gotten from or out of the mines called the —— Mine and the —— Mine respectively, or either of them; and the rent or sum or £—— for every Cheshire acre of one foot in thickness, and so in proportion as aforesaid, of coal and cannel gotten from or out of the other mines hereby demised or any of them. The said footage rents to be paid by half-yearly payments on the —— day of —— and the —— day of —— in

OF COAL MINES IN LANCASHIRE.

each year for and in respect of the coal and cannel gotten during the then preceding half-year. PROVIDED ALWAYS that if in any year of the said term the lessees shall not work and get from or out of the said demised mines and premises such a quantity of coal or cannel as at the rates above mentioned would produce or yield footage rents equal in amount to the said certain rent of £——, then, and as often as the same shall happen, the lessees may, during the next ten years of the said term, or any of them, but not afterwards, work and get from or out of the said demised mines and premises such quantity of coal and cannel as shall be required to make up such deficiency without paying any rent for the same other than the said certain rent.

Provision for making up under workings during the next ten years.

Abatement to be made for coal left to support buildings, &c.

10. A DEDUCTION or abatement shall be made in making or taking the yearly calculation or admeasurement for the purpose of ascertaining the footage rents payable for the then preceding year for and on account of all coal left for the support of buildings under the covenant in that behalf hereinafter contained, or for faulty, thin, or bad coal, or for protection against water, but no such deduction or abatement shall be made for or on account of any pillars, walls, or ranges which may be left in the said mines otherwise than for the support of buildings, or for faulty, thin, or bad coal, or for protection against water as aforesaid, but all such pillars, walls, or ranges other than as aforesaid, shall be paid for in like manner as if the coal constituting the same had been actually gotten from or out of the said demised mines.

Surface rent.

11. THE further yearly rent of £—— shall be paid by the lessees to the lessor for or in respect of every Cheshire acre of land belonging to the lessor, the surface whereof shall be occupied or used by the lessees for any of the purposes of this demise, and so in proportion for any less quantity than an acre, the said surface rent to be paid by equal half-yearly payments on the same days as the said certain rent of £—— is hereinbefore made payable, and the first half-yearly payment thereof to be made on such of the said days as shall happen next after such occupation or use shall commence, and the last half-yearly payment thereof to be made on such of the said days as shall happen next after such occupation or use shall have ceased, and the land shall have been restored and rendered fit for cultivation again, and in case any difference of opinion shall

arise as to what ought to be considered the occupation or use of the surface of any land for the purpose aforesaid, or as to the day on which such occupation or use shall have commenced, or as to the amount of rent payable under the reservation aforesaid, the matter in difference shall be settled by arbitration: PROVIDED ALWAYS that no such rent shall be paid or demanded in respect of any spoil banks or roads or ways now in existence and not used by the lessees.

THE LESSEES' COVENANTS.

Covenants by lessees to pay rents.

12. THE LESSEES hereby jointly and severally covenant with the lessor to pay the rents reserved by this lease at the times and in the manner above appointed in that behalf, and also to observe and perform the provisions hereinafter contained, which are or ought on their parts to be observed and performed.

To pay rates and taxes.

13. IN addition to the rents hereby reserved, the lessees shall pay and discharge all taxes, rates, assessments, and impositions whatsoever which shall from time to time be charged, assessed, or imposed upon the said demised premises or any part thereof, or upon the owner or occupiers thereof by authority of parliament or otherwise, except the landlord's property tax.

To work without intermission, &c.

14. THE LESSEES shall, during the continuance of this demise, work and get the mines hereby demised in a skilful and workmanlike manner, according to the most approved practice of mining in the district, and as to each and every of the mines when opened without voluntary intermission, and shall keep all the pits and shafts, machinery and works belonging to and used in connection with the said mines in good repair, working order and condition.

To fence off pits, &c.

15. THE LESSEES shall and at all times during the continuance of this demise, effectually fence off and keep fenced off from the adjoining lands with good and substantial rails and posts all the pits, shafts, and banking room, roads, railways, canals, reservoirs, clay pits, and other places and conveniences made or used for working and carrying on the mines hereby demised, and maintain sufficient roads, gates, stiles, and fences for the convenient occupation of such lands, and for the passing and repassing by the lessor and his tenants, agents, and servants, and others on foot, and with horses, carts, carriages, and cattle to and from the said lands, for all purposes whatsoever.

OF COAL MINES IN LANCASHIRE.

Not to work within certain distance of fault, or near any buildings.

16. THE LESSEES shall not work the mines hereby demised within the distance of fifty yards from the —— fault except in levels and narrow workings for the purpose of ascertaining its true direction, and shall not work the mines under and adjacent to any building now standing, or which may hereafter be erected on the said lands or any part thereof, without giving to the lessor or his agent one calendar month's previous notice in writing: AND the lessor or his agent may, at any time within one calendar month after the receipt of such notice, mark out what coal shall be left as a support of such building, and the lessees shall leave such coal accordingly: AND if the lessor or his agent shall omit to mark out or to cause to be marked out what coal shall be left as aforesaid for the space of one calendar month after the receipt of such notice, the lessees shall leave so much coal as shall be sufficient to support the said building and protect the same from all damage and injury whatsoever by reason of working the said mines: AND if the lessees shall neglect or omit to leave a sufficient support for such building, and any damage or injury shall be thereby occasioned to such building, then and in such case the lessees shall pay to the lessor, or other the person or persons entitled to or interested in such building, full and adequate compensation for the damage or injury to be done thereto as aforesaid, the amount thereof to be settled in case of dispute by arbitration (*c*).

To account half-yearly with tenant for damage done, &c.

17. THE LESSEES shall on or before the —— day of —— in every year during the continuance of this demise, and before the end of six calendar months from and after the determination thereof, account with the tenants and occupiers of any part of the lands within or under which the said mines and beds of coal and cannel shall be gotten, and also with all persons who may be injured by the working and getting of such mines, or in anywise relating thereto, and pay to them full compensation for all damage or injury done or occasioned through or by means or in consequence of the exercise of any of the liberties and privi-

No rule of law that lessee of mines may not let down surface.

(*c*) The rule of law that where the property in the soil and in the minerals belongs to different persons the mine owner must not work the mines so as to let down the surface, does not apply between a lessor and lessee of mines. The rights of the parties under such a lease must depend on the terms of the contract. Eaden *v.* Jeffcock, L. R. 7 Exch. 379. It is therefore proper to make express provision for protection to the soil and buildings thereon, when intended.

leges hereby granted, and shall indemnify and save harmless the lessor therefrom, the amount of such compensation to be settled in case of difference by arbitration.

To make plans, &c. half-yearly.

18. THE LESSEES shall within one calendar month after each of the half-yearly days hereby appointed for payment of rent make an exact map and admeasurement in acres, roods, perches, and yards of the gettings of the mines hereby demised during the preceding half-year, such admeasurement to be taken as land measure of —— yards to the perch or pole, and to include all pillars, walls, and ranges which may be left as aforesaid, and to particularize the quantities and thickness of each mine separately, or as near as may be, and such map to be on a scale of thirty yards to the inch: AND every such map and admeasurement shall be open at all times to the inspection of the lessor or his agent, who may make copies thereof.

To restore lands to original state at end of lease, or pay for land, which cannot be so restored.

19. THE LESSEES shall at or before the expiration of the said term cause to be restored to their original or natural level, state, and condition, and fit for agricultural occupation all such parts of the lands as shall have been appropriated and used for any of the purposes of this demise: AND if any land shall be permanently damaged or interfered with, so that the same cannot be restored as aforesaid, the lessees shall pay to the lessor at the end or sooner determination of that lease the sum of £—— for every statute acre of such land, and so in proportion for any less quantity than an acre.

To deliver up mines and works in good condition at end of term.

20. THE LESSEES shall, at the expiration or sooner determination of the term, deliver up to the lessor in good repair, order, and working condition, all buildings and erections of brick, stone, or slate standing and being on the lands, and all pits, shafts, watergates, airgates, and levels belonging to the said mines, except pits, shafts, or other works which shall have been abandoned or disused in the ordinary and fair course of working of the said mines, and all such other works and things belonging to the said mines as are not in the nature of tenants' or trade fixtures removable by the lessees, and also all such articles and things (if any) as the lessor shall elect to purchase under the power hereinafter given to him in that behalf.

Lessor to be at liberty to descend shafts to inspect mines.

21. THE LESSOR and his agents, servants, and workmen shall be at liberty at all reasonable times during the said term to descend any pits or shafts of the lessees into the mines hereby demised

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for the purpose of examining the condition thereof, and of the works belonging thereto: And the lessees with proper persons employed by them and acquainted with the workings of the said mines shall effectually assist the lessor or other the persons aforesaid in descending into the said mines, and in returning to the surface, and shall allow him or them the use of all necessary and proper machinery and plant for that purpose.

Not to assign, &c., without license of lessor, but license not to be unreasonably withheld.

22. The lessees shall not assign or underlet the mines and premises hereby demised, or any part thereof, to any person or persons whomsoever, without the consent in writing of the lessor for that purpose first had and obtained, unless such consent shall be unreasonably withheld, and if any question shall arise as to whether the consent is or is not unreasonably withheld the same shall be settled by arbitration (*d*).

The Lessor's Covenant.

Lessor's covenant. For quiet enjoyment by lessees.

23. The lessor [*or* the said A. B. (*e*)] hereby covenants with the lessees that they paying the rents hereby reserved, and observing and performing the covenants and provisions herein contained, and on their parts to be observed and performed, shall peaceably and quietly hold and enjoy the mines and premises hereby demised for and during the term hereby granted, without any lawful interruption from or by the lessor [*or* the said A. B. (*e*)], or any person rightfully claiming from or under him.

General Provisions.

General provisions. Power of distress.

24. If the rents hereby reserved, or any of them, or any part thereof respectively, shall be behind or unpaid for the space of twenty-eight days next after any of the days whereon the same ought to be paid, then and so often as the case shall happen, the lessor may enter into and upon the mines and premises hereby demised, or any lands which shall for the time being be possessed or occupied by the lessees for the purposes of these presents, and may distrain all or any of the coal, cannel, horses, engines, machines, tools, implements, matters, and things which shall be found in or upon the same premises, and the same may

(*d*) See Treloar *v.* Bigge, L. R. 9 Exch. 151.
(*e*) See p. 61, note (*n*).

take, lead, and drive, carry away, and impound, and in pound detain and keep, or otherwise may demean therein according to law, until the rent which shall be then due, and all costs and expenses occasioned by the non-payment thereof, shall be fully paid and satisfied.

Power of re-entry.

25. If the rents hereby reserved, or any of them, or any part thereof respectively, shall be behind or unpaid for the space of sixty days next after any of the days whereon the same ought to be paid as aforesaid, whether the same shall have been legally demanded or not, or if the lessees shall commit any breach of the covenants and conditions contained in this lease and on their parts to be observed and performed, or any of them, then and in any such case it shall be lawful for the lessor at any time thereafter, and although he may not have taken advantage of some previous default of a like nature, into and upon the mines and premises hereby demised, or any part thereof, in the name of the whole to re-enter, and the same to have again, re-possess, and enjoy, as of his former estate.

Power of lessees to determine lease if mines become unworkable.

26. If at any time during the continuance of this demise the mines hereby demised shall become unworkable by reason of any large outbreak of water not caused by improper working or by any default of the lessees, then and in such case the lessees may determine the lease on the —— day of —— in any year of the term hereby granted by giving to the lessor twelve calendar months' notice in writing to that effect, but without prejudice to the rights and remedies of the lessor, under or by virtue of these presents, for the recovery of any rent which may then remain unpaid, or in respect of any breach which may have been committed of any of the covenants herein contained on the part of the lessees.

Lease to determine if mines are worked out.

27. If all the mines, seams, beds, or veins of coal and cannel hereby demised and getable to profit shall be wholly exhausted before the expiration of the term hereby granted therein, then this lease shall thereupon cease and determine as if the same had expired by effluxion of time, but without prejudice to the rights and remedies of the lessor for the recovery of any rent then remaining unpaid, or in respect of any breach which may have been committed of any of the covenants herein contained on the lessees' part.

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Power to lessor to purchase plant, &c., at end of term.

28. If at the end or sooner determination of this demise the lessor shall be desirous of purchasing all or any of the movable machinery, plant, articles, and things in, upon, or under the said lands, or any part thereof, and used or employed in connection with the mines hereby demised (including all things in the nature of fixtures removable by the lessees during the continuance of this lease), and shall signify such his desire by notice in writing to the lessees six calendar months at least before the expiration or sooner determination of the said term (unless the said term shall be determined under the power of re-entry hereinbefore contained, in which case the notice may be given at any time within six calendar months after such determination of the said term) then and in such case the articles and things specified in such notice shall be left by the lessees and be taken by the lessor at a valuation to be made thereof, in case of any difference or dispute between the parties as to their value, in the manner hereinafter provided, and the amount of such valuation, when ascertained or settled, shall be paid to the lessees within three calendar months next after such valuation shall have been agreed upon and delivered to the parties, together with interest thereon after the rate of £4 per cent. per annum from the time of such delivery thereof.

Arbitration clause.

29. If any dispute or difference shall arise between the lessor and the lessees concerning the value of the articles and things which the lessor shall elect to take or retain as aforesaid, or the amount to be paid by the lessor in respect thereof, or touching or concerning any other matter or thing which it is hereby provided shall be settled by arbitration, or touching any clause, matter, or thing whatsoever herein contained, or the operation or construction thereof, or any matter or thing in any way connected with these presents, or the rights, duties, or liabilities of either party under or in connection with these presents, then and in every such case the dispute or difference shall be referred to a single arbitrator [*or* to two arbitrators, one to be appointed by each party in difference] in accordance with and subject to the provisions of the Arbitration Act, 1889 (*f*).

When there is an arbitration clause, and an action is brought in

(*f*) An arbitration clause does not altogether oust the jurisdiction of the ordinary Courts of law (Cooke *v.* Cooke, L. R. 4 Eq. 77; Witt *v.* Corcoran, 8 Ch. 476, n.); but it is provided by sect. 4 of the Arbitration Act, 1889, that if any party commences legal proceedings in respect of any matter

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30. EVERY NOTICE hereby required or authorized to be given to the lessor may be either given to him personally or left at his usual or last known place of abode in England or Wales, or may be given to such agent or other person or in such manner as the lessor may from time to time direct; and every notice hereby required or authorized to be given to the lessees may be given to them or either of them personally, or left at their office or counting-house for carrying on the business of their works under these presents.

Notices, how to be given.

31. WHERE the context allows, the expressions "the lessor" and "the lessees," used in these presents, include, besides the said A. B., his successors in title [or heirs] and assigns, and besides the parties hereto of the second part, their executors, administrators, and assigns.

Meaning of "lessor" and "lessees."

IN WITNESS, &c.

No. XXVI.

OF COAL AND IRON MINES IN NORTHUMBERLAND.

LEASE *of* MINES *of* COAL, IRONSTONE, *and* FIRECLAY *in Northumberland* (*g*).

THIS INDENTURE, made the —— day of ——, 18—, BETWEEN A. B. of, &c. (*lessor*), of the one part, and C. D. of, &c., E. F. of, &c., and G. H. of, &c. (*lessees*), of the other part, WITNESSETH AND DECLARES as follows:—

Parties.

1. IN consideration of the rents and lessees' covenants hereinafter reserved and contained, the said A. B. (hereinafter called "the lessor") hereby demises [*or* in exercise, &c., hereby

Lease of mines.

respect of matter agreed to be referred, Court may stay proceedings.

agreed to be referred, the Court may stay the action, upon being satisfied that no sufficient reason exists why the matter cannot and ought not to be referred to arbitration, and this power will in general be acted on. See Willesford *v.* Watson, L. R. 14 Eq. 572; Russell *v.* Russell, 14 C. D. 471.

Submission irrevocable.

A submission to arbitration is irrevocable except by leave of the Court, unless a contrary intention is expressed. 52 & 53 Vict. c. 49, s. 1.

(*g*) This Precedent might also be used for a lease of mines in any other county where the practice of mining is similar.

For variations where the lease is under a power, &c., see Precedent No. VIII., *supra*, p. 62.

OF COAL AND IRON MINES IN NORTHUMBERLAND.

appoints and demises] unto the parties hereto of the second part (hereinafter called "the lessees"), ALL those mines, beds, veins, and seams of coal, ironstone, and fireclay, as well opened as unopened, lying, or being in or under the lands situate in the parish of ——, in the county of Northumberland, known as ——, which lands are delineated in the map or plan annexed to these presents, and are therein distinguished by a line of red colour drawn round the outer boundary thereof: TOGETHER with the rights, &c. (*as in last Precedent, Art.* 1 *to the end*).

LESSEES' RIGHTS AND PRIVILEGES.

Liberty to work mines demised, and also by way of outstroke adjoining mines.

2. It shall be lawful for the lessees at all times during the said term to work the mines hereby demised, and also to work from or through the said mines by outstroke or instroke any other mines of coal, ironstone, or fireclay belonging to or held by the lessees, and also to carry over the surface of the lands under which the mines hereby demised lie, the produce of the mines hereby demised and of such other mines as aforesaid, and to exercise and enjoy, in and upon and under the said lands, all easements, rights, and privileges necessary or convenient for the purposes aforesaid, and in particular to do all or any of the following things (that is to say)—

To sink pits, &c.

To sink, drive, make, erect, set up, and construct in, upon, over, or under the said lands, pits, shafts, outstrokes, instrokes, drifts, levels, watercourses, aircourses, engines, machinery, houses for the residence of workmen and others employed in the said mines, sheds, furnaces, kilns, ovens, railroads, tram roads, and other roads, erections, and other works, and to use all works of the above description now existing in connection with the said mines:

To appropriate water.

To appropriate the water upon or within the said lands, and to collect the same in ponds and reservoirs, or otherwise, but so that the lessees shall not in exercising this privilege foul, impregnate, or otherwise deteriorate the springs or streams of water on the said lands, so as to render them useless or unprofitable:

To use land for depositing minerals and spoil.

To use and appropriate a sufficient part of the said lands for depositing and heaping thereon the coal, ironstone,

and fireclay to be raised and gotten from the said mines hereby demised, and such other adjoining mines as aforesaid, and all the earth, soil, and other substances brought to the surface in or about the working of the same:

To make coke, calcine ironstone and make bricks.

To convert coal into coke and patent fuel, to calcine ironstone, and manufacture fireclay into bricks and other articles, whether for colliery purposes, or for sale, or otherwise:

To dig common clay, &c., for colliery purposes.

To dig, work, and get common clay and stone from the said lands, and to manufacture the common clay into bricks and tiles for the purposes of the colliery erections and works hereby authorized, but not for sale or any other purpose.

3. Provided always that so much of every bed, vein, and seam of coal, ironstone, and fireclay hereby demised shall remain unworked as will leave within the limits of this demise a barrier of —— yards in breadth or thickness separating the said mines hereby demised from the adjoining mines, and all outstroke and instroke drifts made through the said barrier for the purpose of working adjoining mines as aforesaid shall be of such size and in such situations as shall have been previously approved of by the lessor or his agent, and all such drifts shall be so made as to be capable of being easily and effectually closed by framedams when the use thereof has ceased.

Barrier to be left.

Drifts how to be made.

4. Provided also that all surface operations shall be carried on upon such part only of the said lands as shall be selected for that purpose in manner following (that is to say): Whenever the lessees shall require to occupy or use any land for surface operations, they shall give a notice in writing to the lessor or his agent specifying the site proposed for such surface operations. If the lessor or his agent objects to the site so proposed, he shall, within fourteen days after receiving such notice, himself select a site, and notify the same in writing to the lessees, and the lessees shall be at liberty at any time within fourteen days after the selection of such site shall have been made and notified to them as aforesaid, but not afterwards, to object to the same as being unsuitable or inconvenient for the purpose for which the same is required, and to notify such objection in writing to the lessor or his agent: And in case of such objection being

Surface operations, where to be carried on.

OF COAL AND IRON MINES IN NORTHUMBERLAND.

made and notified as aforesaid, the question whether the site is suitable and convenient or not shall be referred to arbitration under the provision in that behalf hereinafter contained.

Plan and sanitary arrangements of cottages to be approved by lessor.

5. PROVIDED ALSO that no houses for residence shall be erected by the lessees under the liberty and power above granted for that purpose until the plan, accommodation, and sanitary arrangements of such houses shall have been submitted to the lessor and approved of by him; and in case a difference of opinion on any of such points shall arise between the lessor and the lessees the same shall be referred to arbitration under the provision in that behalf hereinafter contained. AND no houses shall be used except for the purpose of residence of agents, miners, and workmen employed in or about the said mines and works, and in particular no trade of any sort shall be carried on in any such houses or any of them.

6. (*Lessees to be at liberty to remove machinery, &c., at end of term, supra*, p. 113.)

Reservations to lessor.

RIGHTS RESERVED TO LESSOR.

Liberty for lessor to use railroads, &c., of lessees, doing as little injury as possible to lessees,

7. THE LESSOR shall be at liberty by himself, his tenants, agents, and servants, to use any railroads or other roads made and used by the lessees over the said lands under the authority of these presents without paying any rent for the same, and also to make, construct, and use, and to grant and demise to other persons the right to make, construct, and use over the said lands any railroads or other roads crossing or intersecting the railroads or other roads of the lessees: PROVIDED ALWAYS, that in the exercise of the rights, liberties, and privileges hereby reserved to the lessor, as little hindrance, obstruction, and damage as possible be done to the lessees, or to the exercise by them of the rights and privileges hereby granted to them: AND fair and proper compensation shall be paid by the lessor, or other the person or persons exercising the said reserved rights and privileges, to the lessees for all loss, damage, or injury which they may sustain or incur by reason or in consequence of the exercise thereof, the amount of such compensation to be settled in case of difference by arbitration.

and compensating them for all loss, &c.

Rents reserved by this Lease.

Rents.

Certain rent.

8. The lessees shall pay to the lessor for the mines hereby demised the certain yearly rent next hereinafter mentioned (that is to say), the yearly rent of £—— for the first and second years of the term hereby granted, the yearly rent of £—— for the third and fourth years of the said term, and the yearly rent of £—— for the remainder of the said term: The certain yearly rent payable for the time being as aforesaid to be paid by equal half-yearly payments on the —— day of —— and the —— day of —— in every year: For and in respect of which certain yearly rent the lessees may work and get in every year from and out of the said mines and premises such a quantity of coal as at the rates hereinafter mentioned would produce for that year a rent equal in amount to the said certain rent: But the said certain rent shall always be paid, whether such quantity shall in fact be gotten or not.

Rent for screened coal and small coal.

9. The lessees shall pay to the lessor the rent of —— for every ton of screened coals, and —— for every ton of small coals (and so in proportion for any less quantity) which shall be raised or gotten from or out of the said mines and premises in any year of the said term over and above the quantity which the lessees are hereinbefore authorized to work and get in respect of the said certain rent. Provided always that if in any year the lessees shall not raise and get from or out of the said mines such a quantity of coal as at the above-mentioned rates would produce for that year the amount of the certain rent hereby reserved, then and in every such case the lessees may in any subsequent year or years [*or* during the next —— years of the said term but not afterwards] raise and get from or out of the said mines and premises such a quantity of coal as shall be required to make up the deficiency without paying any rent for the same other than the said certain rent: But the overworkings of any preceding year or years shall not come in aid of or be applied to make good the deficiency or short workings in any subsequent year or years.

Power to lessees to make up short workings.

Rent for ironstone and fireclay.

10. The lessees shall pay to the lessor the rent of —— for every ton of ironstone, and the rent of —— for every ton of fireclay which shall be raised from the said mines and premises.

OF COAL AND IRON MINES IN NORTHUMBERLAND.

Outstroke rent.

11. The lessees shall pay to the lessor an outstroke rent of —— for every ton of coal, ironstone, or fireclay, the produce of any mines not hereby demised, which shall be brought to the surface through or by means of the mines hereby demised, and the pits or shafts thereof under the authority of these presents (*g*).

Wayleave rent.

12. The lessees shall pay to the lessor a wayleave rent of —— for every ton of coal, ironstone, or fireclay, the produce of any mines not hereby demised, which shall be led or carried over the surface of the said lands or any part thereof under the authority of these presents, not being coal, ironstone, or fireclay, subject to the payment of outstroke rent under the last preceding article (*g*).

(*g*) The following clause, reserving a greater variety of rents, is taken from a Northumberland mining lease, and may be used when applicable, instead of the reservation of outstroke and wayleave rent in the text:—

Watercourse or aircourse rent.

11. The lessees shall also pay to the lessor the following rents, namely—(1) a watercourse or aircourse rent of —— for every ton of coal, ironstone, or fireclay, the produce of any mine other than the mines hereby demised which shall be drained, ventilated, or made workable by means or with the aid of any outstroke from the mines hereby demised, whether the same coal, ironstone, or fireclay shall be carried through such outstroke into the mines hereby demised or not. (2) An outstroke rent of —— for every ton of coal, ironstone, or fireclay, the produce of any mines not hereby demised which shall be brought or carried through any such outstroke as aforesaid into the said mines hereby demised, whether or not such coal, ironstone, or fireclay shall be brought to the surface through or by means of any pit or shaft made or used by the lessees under the authority of these presents. (3) A shaft rent of —— for every ton of coal, ironstone, or fireclay, the produce of any mines not hereby demised which shall be brought to the surface through or by means of any pit or shaft made or used by the lessees under the authority of these presents. And (4) a wayleave rent of —— for every ton of coal, ironstone, or fireclay, the produce of any mines not hereby demised which shall be led or carried over the surface of the said lands or any part thereof, or having been brought into the mines hereby demised, shall be otherwise led or carried away by the lessees under the authority of these presents.

Outstroke rent.

Shaft rent.

Wayleave rent.

OF COAL AND IRON MINES IN NORTHUMBERLAND.

13. The rents above reserved (other than the said certain rent) shall be paid respectively on the —— day of ——, and —— day of —— in every year, for and in respect of the coal, ironstone, and fireclay, raised or gotten (*h*) during the then preceding half-year, and in respect of which the same shall be payable: The said rents shall be calculated upon the weights or quantities of coal, ironstone, and fireclay respectively, as the same shall be first worked and gotten, and prior to screening, washing, or cleansing. A ton shall be reckoned at 2,240 lbs. How rents to be calculated.

14. The lessees may in each year have and retain for the usual and customary purposes of the colliery, and for domestic consumption in the houses or offices of the lessees or their agents and workmen for the time being employed in and about the said mines and premises, but not for sale or for any other purpose, any quantity not exceeding —— part of the whole weights and quantities of coal which shall be gotten and raised during such year from the mines hereby demised, without paying any rent for the same: And all fireclay raised from the said mines, and used by the lessees in or about the erection, alteration, or maintenance of buildings for colliery purposes, or any other works authorized by these presents, shall be free from rent. Lessees may retain a limited quantity of coal for domestic and other purposes rent free. Fireclay used in building for colliery purposes to be rent free.

15. The lessees shall also pay to the lessor for and in respect of every acre of land, the surface whereof shall be occupied or used by the lessees under the authority of these presents, a yearly rent, double in amount of the value per acre of the same lands for agricultural purposes at the time when such occupation or use shall commence, and so in proportion for any less quantity than an acre, the said surface rent to be paid half-yearly on the —— day of —— and the —— day of —— in every year, the first of such payments to be made on such of the said half-yearly days as shall happen next after such occupation or use shall have commenced, and the last of such payments to be made on the half-yearly day of payment which shall happen next after such occupation or use shall have ceased, and the land shall have been restored and rendered fit for cultivation again, or shall have been paid for at the fee simple value as provided in the lessees' covenant in that behalf hereinafter contained: And if any difference Surface rent.

(*h*) If the clause in the last note is used, add here "or drained, ventilated, or made workable."

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of opinion shall arise as to what ought to be considered the occupation or use of the surface of any land for the purposes aforesaid, or as to the day on which such occupation or use shall have commenced, or as to whether such land shall have been restored and rendered fit for cultivation, or as to the amount of rent payable under this reservation, the matter in difference shall be settled by arbitration.

The Lessees' Covenants.

Lessees' covenants.

16. The lessees jointly and severally covenant with the lessor, &c. (*to pay rents and observe provisions after contained, supra*, p. 117).

17. (*Covenant to pay rates and taxes, supra*, p. 117.)

To keep books of account, &c.

18. The lessees shall at all times, during the said term, keep or cause to be kept at the office or counting-house of the colliery, to be situate in or contiguous to some part of the said lands, correct and intelligible books of account upon such plan or principle as is generally adopted in such cases, which books shall contain accurate entries of the quantity of coals and other minerals wrought and brought to bank from the mines and premises hereby demised, and from any adjoining or other mines worked through the mines hereby demised as aforesaid (*i*) with all particulars of dates and other facts necessary or proper for conveniently ascertaining the amounts of the several rents from time to time payable under these presents: And also shall at their own expense furnish to the lessor or his agent true and correct copies of such accounts, and of all bills of presentment whenever thereunto required, and shall, if required, verify such copies by the statutory declaration of themselves or their agent.

To keep plans of working.

19. The lessees shall at all times, during the said term, cause to be made and kept at the said office or counting-house, correct and intelligible plans and sections of all the said mines hereby demised, and of any mines worked through the mines hereby demised, which plans and sections shall show as well the operations and workings which have been carried on as also all dykes, troubles, veins, faults, and other disturbances which have

(*i*) If the clause in note (*g*) is used, add here "or drained, ventilated, or made workable as aforesaid."

been observed and encountered in such workings and operations: And all such plans and sections shall be made, amended, and filled up by and from actual surveys to be made for that purpose at the end of every period of three months, and the lessees shall at their own cost and charges furnish to the lessor or his agent true and correct copies of such plans and sections when thereunto required.

Lessor to have access to books of account and plans.

20. It shall be lawful for the lessor and his agents and servants at all reasonable times during the said term to enter into and have free access to the said office or counting-house, for the purpose of examining and inspecting the said several books of account, plans, and sections, and also all railway accounts and vouchers for carriage, and to take copies thereof and make extracts therefrom respectively.

Lessees to keep weighing machine at the mouth of each pit.

21. The lessees shall provide, and at all times during the said term keep at or near the pit or each of the pits at which the produce of the mines and premises hereby demised shall be brought to bank, a good and properly constructed weighing machine, and shall weigh or cause to be weighed therein all coal and other minerals brought to bank from or out of the mines hereby demised, or from or out of any adjoining or other mines worked through the mines hereby demised under the authority of these presents, and shall cause the weights ascertained as aforesaid to be forthwith duly registered at the machine-house or houses, and shall also at the end of each day cause the total weights and quantities of coal and other minerals, gotten during the day and weighed as aforesaid, to be entered in the aforesaid book or books of account: And it shall be lawful for the lessor at all times during the said term to employ any person or persons to be present at the raising and weighing of the coal and other minerals, and to keep accounts thereof, and to check the accounts kept by the lessees.

Lessor may appoint person to be present at weighing.

The lessor may test weighing machines.

22. The lessor and his agents and servants may, at any time or times during the said term, examine and test each and every weighing machine to be provided and kept by the lessees as aforesaid, and the weights used therewith, in order to ascertain whether the same respectively are correct and in good repair and order: And if upon any such examination or testing any such weighing machine or weights shall be found incorrect or out of repair or order, it shall be lawful for the lessor or his agent to

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require that the same be adjusted, repaired, and put in order by and at the expense of the lessees, and to hinder the use thereof in the meantime: AND if such requisition be not complied with within fourteen days after the same shall have been made, the lessor or his agent may cause the said weighing machine and weights respectively to be adjusted, repaired, and put in order, and may recover the expense of so doing from the lessees: AND if upon any such examination or testing as aforesaid any error shall be discovered in any weighing machine or weights to the prejudice of the lessor, such error shall be considered to have existed for three calendar months previous to the discovery thereof, or from the last occasion of so examining and testing the same weighing machine or weights in case such occasion shall be within such period of three months: AND the several rents hereinbefore reserved shall be paid or accounted for accordingly.

To work mines properly.

23. THE LESSEES shall at all times during the said term win and work the said mines and premises hereby demised in a proper, fair, and regular manner, and according to the most approved practice of winning and working mines of the like nature respectively in the counties of Durham and Northumberland, and in accordance with the Mines Regulation Acts, and with as little damage as possible to the surface and to the buildings, fences, crops, and other property thereon.

To pay compensation for damage to surface.

24. THE LESSEES shall within one calendar month after the end of every year of the said term pay to the lessor full and reasonable compensation for all injury or damage done to the surface or the buildings, fences, crops, or other property thereon during the preceding year in or about the carrying on of the works hereby authorized, the amount of such compensation to be settled in case of dispute by arbitration.

To leave barrier and stop and secure drift when no longer required.

25. THE LESSEES shall not work or carry away any part of the barrier hereinbefore directed to be left as aforesaid, except for the purpose of making drifts by way of outstroke or instroke as hereinbefore authorized: AND they shall, upon the expiration or sooner determination of the said term, or when and so soon as any such drift shall cease to be used, which shall first happen, provide sufficient frame-dams for stopping and securing the said drifts and passages, and shall by and with such frame-dams stop and secure the same accordingly, unless the lessor or his

agent shall by notice in writing request them not to stop the same, in which case the lessees shall not stop the same accordingly.

To fence off pits, &c.,

26. THE LESSEES shall well and effectually fence off from the adjoining lands all the pits, shafts, and other works made or used under the authority of these presents, and shall provide and maintain in good repair and condition proper roads, gates, stiles, and fences for the convenient occupation of the said lands: They shall also provide and maintain proper and sufficient drains, culverts, arches, and passages for carrying off any water which shall arise or be produced or interrupted by any of the works hereby authorized, so that the drainage of the said lands be not prevented or prejudiced.

and provide proper roads, gates, drains, &c.

Furnaces and coke ovens to be constructed on most approved principles.

27. ALL furnaces, coke ovens, or brickworks to be erected on any part of the said lands under the authority of these presents shall be respectively constructed on the most approved principle in use at the time or respective times when the same shall be erected, and the lessees shall use their best endeavours to effect to the greatest possible extent the consumption on the premises by the most approved method for the time being adopted or known of all smoke or vapour made or arising from the furnaces, coke ovens, brickworks, engines, or other works of the lessees, so that as little smoke or vapour as may be shall issue from the chimneys or other outlets used by the lessees for the conveyance or passage of smoke or vapour.

To consume smoke.

To purify water discharged from works.

28. THE LESSEES shall in the discharge from their works of water which shall have been used for washing coal, or which has run through or passed near to burning refuse or cinder ovens, or other works, use the most approved methods by deposit or catch pits, or otherwise, to render such water as little noxious as possible before allowing the same to mix with any of the natural rivulets or brooks running through the said lands, and in case any difference of opinion shall arise as to the size, the number, or the mode of application of such deposit or catch pits, or other means or otherwise relating thereto, the matter in difference shall be settled by arbitration.

To provide wells and watering places for occupiers of surface.

29. THE LESSEES shall from time to time and at all times during the said term make and maintain in good order and repair sufficient wells or watering places in all cases where by reason or in consequence of the exercise of the rights and liber-

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ties hereby granted, or any of them, the occupier of any of the said lands, or any adjoining or neighbouring lands, shall be deprived of his wells or watering places, and shall make and maintain in good order and repair all necessary watercourses and drains for carrying waters to the wells and watering places to be made and maintained as aforesaid.

Lessor to be at liberty to remove manure and ashes.

30. It shall be lawful for the lessor or his tenants, as he shall direct, to have and take for his or their own use, free of expense, the whole of the manure and ashes made and produced on or about the pits, shafts, roads, or ways of the lessees or otherwise in working and carrying on the mines and premises hereby demised during the said term, and the lessor and his tenants shall be allowed all proper facilities for removing and taking away such manure and ashes.

Not to use railways, &c., for purposes not expressly authorised.

31. The lessees shall not use or permit to be used any of the railways, waggonways, or other roads or ways, or any pits, shafts, outstroke or instroke, drifts, watercourses, aircourses, buildings, erections, machinery, or other works or conveniences which shall be made or used by them under the authority of these presents in, over or upon, or under the said lands for any purpose whatsoever other than the working of the mines hereby demised, and such other mines as aforesaid, and such other purposes as are herein specially mentioned.

32. The lessor, &c. (*lessor to be at liberty to descend shafts, and to inspect mines, as in last Precedent, Article* 21, *supra*, p. 119.)

To deliver up mines, &c., in good working order at end of term.

33. The lessees shall at the end or sooner determination of the said term deliver up to the lessor in good order, repair, and condition, and fit for the future working of the said mines and premises hereby demised, all engines, houses, and buildings of stone or brick, pits, shafts, watercourses, air-gates, and levels in the said mines and premises, except any pits, shafts, or other works which shall have been abandoned or disused in the ordinary and fair course of working of the said mines and premises: And also all and singular the movable machinery, works, articles, and things which shall be in, upon, or under the said lands, and which the lessor shall elect to purchase under the power in that behalf hereinafter given to him: And also shall at the end of the said term bank up all coals at the pit, not exceeding three months' vend, in such manner as to be no hindrance to an incoming tenant.

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34. The lessees shall at or before the expiration or sooner determination of the said term, cause to be restored to their original or natural condition all such parts of the said land as shall have been appropriated or used for any of the purposes of this demise, or shall (at the option of the lessor) pay to the lessor the value of the fee simple of the same, such value to be estimated at thirty years' purchase of the rack rent or value per acre of the same land for agricultural purposes at the time when the occupation or use thereof for the purposes of this demise shall have commenced.

At end of term to restore lands or pay fee simple value.

35. (*Covenant not to assign or underlet without licence, as in last Precedent, Article* 22, *supra*, p. 120.)

The Lessor's Covenant.

36. (*Covenant for quiet enjoyment by lessees, as in last Precedent, Article* 23, *supra*, p. 120.)

Lessor's covenant for quiet enjoyment.

General Provisions.

37, 38. (*Powers of distress and re-entry, supra*, pp. 120, 121.)

General provisions.

39. If the lessees shall be desirous at the end of any year of the said term hereby granted to abandon and yield up the mines and premises hereby demised, and of such their desire shall give notice in writing to the lessor twelve calendar months at least before the period of such proposed abandonment, then this lease shall at such last-mentioned period cease and determine, but without prejudice to the rights and remedies of the lessor for any rent in arrear or for any previous breach of the lessee's covenants herein contained.

Lessees may abandon mines on giving twelve months' notice.

40. If at the end or sooner determination of this lease the lessor shall be desirous of purchasing all or any of the movable machinery, articles, and things in, upon, or under the above-mentioned lands or any part thereof, and used or employed in about carrying on and working the mines hereby demised, or for the more convenient occupancy thereof, and shall signify such his desire, &c. (*power to lessor to purchase machinery, supra*, p. 122.)

Lessor may purchase machinery, &c., at end of term.

41, 42, 43. (*Arbitration clause, clause as to notices, and meaning of "lessor" and "lessees," supra*, pp. 122, 123.)

In witness, &c.

No. XXVII.

BY TRUSTEES UNDER POWER.

LEASE *of* MINES *by* TRUSTEES *of a* SETTLEMENT *under a* POWER, *the legal estate being vested in an* INFANT TENANT *in* TAIL.

Parties.

THIS INDENTURE, made the —— day of —— 18—, BETWEEN A. B. of, &c., and C. D. of, &c. (*trustees*), of the first part, and E. F. of, &c., G. H. of, &c., and I. K. of, &c. (*lessees*), of the second part.

Recital of settlement.

WHEREAS under an indenture of settlement, dated, &c., and made, &c. (*date and parties*), X. Y., an infant, is tenant in tail in possession of the hereditaments thereby settled, and the said L. M. and N. O. are the trustees of the said indenture, and as such trustees are entitled to manage and receive the rents and profits of the said hereditaments during the minority of the said X. Y., and have also power to grant mining leases upon and subject to the conditions mentioned in the said indenture, and have also power to sell the said hereditaments (*k*):

That mines intended to be leased are part of the settled property.

AND WHEREAS the mines and hereditaments intended to be hereby appointed and demised are part of the hereditaments settled by the said indenture:

Trustees in exercise of power appoint and demise mines.

NOW THIS INDENTURE WITNESSETH AND DECLARES as follows:—

1. IN consideration of the rents and lessees' covenants hereinafter reserved and contained, the said A. B. and C. D., in exercise of the power for this purpose given to them by the said indenture of settlement, and of all other powers (if any) them hereunto enabling, hereby appoint and demise unto the parties hereto of the second part, ALL, &c. (*description of mines*), TO HOLD the same unto the said parties hereto of the second part, from the —— day of ——, 18—, for the term of —— years thence next ensuing; subject to the provisions hereinafter contained; IN which provisions the term "the lessor" shall be construed to mean the person or persons for the time being entitled to the reversion expectant on this lease, and the term

(*k*) This reference to the power of sale is introduced in order to show that the trustees are trustees for the purposes of the Settled Land Act. If other persons were trustees for that purpose, their consent would be necessary. *Re* Duke of Newcastle's Estates, 24 C. D. 129.

"the lessees" shall be construed to mean the said parties hereto of the second part, and to include also (where the context allows) all persons deriving title under them. BY TRUSTEES UNDER POWER.

(*Remaining clauses as in Precedent No. XXV. or No. XXVI. omitting the covenant by the lessor for quiet enjoyment by the lessees, and substituting the following covenant*) :—

THE TRUSTEES' COVENANT.

THE said A. B. and C. D. as to their own respective acts and deeds, but not further or otherwise, do hereby respectively covenant with the lessees, that they the said A. B. and C. D. respectively have not done or knowingly suffered or been party or privy to any act, deed, or thing whereby they are prevented from appointing and demising the said mines and premises, and conferring the rights and privileges hereby expressed to be appointed, demised, and conferred respectively in manner aforesaid. Covenant by trustees that they have done no act to prevent their granting lease.

AND it is declared that the foregoing covenant is in satisfaction of any covenant or warranty for quiet enjoyment by the lessees which would otherwise be implied by law as incident to the demise hereby made.

(*And among the general provisions the following should be inserted*) :—

ALL rights by these presents reserved to and conferred on the lessor may be exercised by the said A. B. and C. D. or the survivor of them, or other the trustees or trustee for the time being of the hereinbefore recited indenture of settlement, so long as they or he shall be entitled to manage and receive the rents and profits of the settled hereditaments under the provision in that behalf contained in the said indenture. Lessor's rights may be exercised by trustees while entitled to receive the rents of the settled estates.

(*The clause as to meaning of "lessor" and "lessee" will be omitted.*)

IN WITNESS, &c.

No. XXVIII.

OF MINES IN SOUTH WALES UNDER SETTLED LAND ACT.

LEASE *of* MINES *of* COAL *and other* MINERALS *in* SOUTH WALES *by* TENANT *for* LIFE *under* SETTLED LAND ACT, 1882.

Parties.

THIS INDENTURE, made the —— day of —— 18—, BETWEEN A. B. of, &c. (*tenant for life and lessor*), of the first past, C. D. of, &c., E. F. of, &c., and G. H. of, &c. (*trustees of settlement*), of the second part, and The —— Company, Limited (*lessees*), of the third part: WHEREAS by an indenture of settlement, dated, &c., and made, &c. (*state date and parties*), divers lands and hereditaments therein described, of which the mines intended to be hereby leased form part, were settled to uses, under which the said A. B. is now tenant for life in possession without impeachment of waste: AND the said C. D., E. F., and G. H. are the trustees of the said settlement for the purposes of the Settled Land Acts, 1882 to 1890: NOW THIS INDENTURE WITNESSETH AND DECLARES as follows:

Recital of settlement.

Witnessing part.

Tenant for life appoints and demises to lessees.

1. IN consideration of the rents and lessees' covenants hereinafter reserved and contained, the said A. B. (hereinafter called "the lessor"), in exercise of the power for this purpose given to him by the said Acts, and of all other powers (if any) him hereunto enabling, doth hereby demise unto the said company (hereinafter called "the lessees") ALL the seams or veins of coal, culm, blackband, iron-ore, ironstone, and fireclay now unworked, lying in and under the lands, &c. (*describing them*); TOGETHER with the rights and privileges to be exercised in connection with the said mines and minerals which are hereinafter particularly mentioned: TO HOLD the same unto the lessees from the —— day of ——, 18—, for the term of forty years, subject to the provisions hereinafter contained.

Parcels.

Habendum to lessees for term.

RIGHTS AND PRIVILEGES TO BE EXERCISED BY LESSEES.

Liberty to work mines and sink pits, &c.

2. THE LESSEES may at all times during the said term (but subject to the restrictions hereinafter expressed) sink, drive, erect, make, and construct in upon and under the lands the mines whereunder are hereby demised, such and so many pits,

shafts, engine or other planes, levels, adits, sumps, waterways, airways, engines, engine houses, coke ovens, brick and tile works, machinery, workshops, tramroads, railroads, and other roads, communications, watercourses, ponds, spoil heaps, and other conveniences as may be necessary or convenient for effectually exploring, winning, working, raising, stacking, converting, manufacturing, transporting, or otherwise disposing of the minerals hereby demised. OF MINES IN SOUTH WALES UNDER SETTLED LAND ACT.

3. THE LESSEES may appropriate and use for the purposes hereinbefore expressed such part of the surface of the said lands as may be agreed on between the lessor and the lessees as suitable and proper for the purpose: AND if any land proposed to be appropriated for surface works by the lessees shall be objected to by the lessor, the question whether the same is suitable and proper shall be referred to arbitration under the provisions in that behalf hereinafter contained: AND if upon such arbitration the proposed site shall be found to be suitable and proper, the same shall be deemed to have been agreed to for the purpose of this clause. To appropriate part of surface for works.

4. THE LESSEES may open and work a quarry, and may quarry stones, in some proper and convenient situation approved of by the lessor or his agent, and may use and employ the same in and for the purposes of the mines hereby demised and the works in connection therewith, or for sale or use elsewhere. To open a quarry for building stone..

5. THE LESSEES may work the mines and minerals hereby demised by instroke from any adjoining mines belonging to or held by them, and the pits and shafts thereof, and may also work any adjoining mines belonging to or held by them by outstroke through the mines hereby demised and the pits and shafts thereof. To work by instroke and outstroke.

6. NOTHING herein contained shall prevent the lessor, or any persons authorized by him, from working any mines or minerals in and under the said lands, other than those included in this lease, or from sinking pits or shafts, or constructing other works upon or under the said lands for that purpose; provided that no injury be thereby done, and no obstruction caused to the operations or works of the lessees in connection with the mines and minerals hereby demised: AND if any injury or damage shall be done thereto, then proper compensation shall be paid to the lessees for the same, the amount of such compensation to be Reservation of rights to lessor as regards minerals not included in lease.

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settled, in case of difference, by arbitration in manner hereinafter mentioned.

RENTS.

Galeage rents.

7. THE LESSEES shall pay to the lessor during the said term for every customary ton comprising 2,520 pounds of coal, culm, blackband, ironstone, fireclay, and building stone which may be worked and got from or out of the mines hereby demised (other than such coal and building stone as is hereinafter exempted from galeage) the following galeages, namely, for large coal, the sum of 8*d.*; for small coal that will pass through a screen the apertures between the bars of which shall not exceed one inch, and one-eighth of an inch in width, the sum of 4*d.*; for blackband and ironstone, the sum of 8*d* ; for fireclay, the sum of 4*d.*, and for building stone, the sum of 3*d.* The said galeage rents to be paid quarterly on the —— day of ——, the —— day of ——, the —— day of ——, and the —— day of ——, in every year, the first of such quarterly payments to be deemed to have become due on the —— day of ——, 18—.

Minimum rent.

8. IF in any year or years of the said term the minerals worked from the mines hereby demised shall not amount at the rates of galeage hereinbefore mentioned to £——, then and in such case the lessees shall nevertheless pay to the lessor the sum of £——, as and for such one year's galeage, by quarterly payments as aforesaid, it being the intention that the rent shall not in any case be less than £—— per annum during the said term, whether sufficient minerals to produce that amount at the rates of galeage hereinbefore mentioned, or any minerals, be worked or not.

Division of term into averaging periods.

9. FOR the purpose of the clause next hereinafter contained, the term hereby granted shall be divided into successive periods of three years each, the first period to be deemed to have commenced with the commencement of this lease, and to end at the expiration of three years from such commencement, the second period to commence at the end of the first period, and to end at the expiration of three years from its own commencement, and every subsequent period to commence at the end of the period immediately preceding it, and to end at the expiration of three years from its own commencement.

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Average clause.

10. If (*a*) in any triennial period it shall happen that the quantity of minerals worked by the lessees in any one year or two years of that period shall be more than sufficient to produce at the aforesaid rates of galeage the full rent of £—— for that year, or for each of those years, but the quantity worked in the other years or year of the same period shall be insufficient for that purpose, then and in every such case the overworkings of that one year, or those two years, shall be set off against and go in aid of the short workings of the other year or years of the same period, and the accounts shall be adjusted at the end of every quarter of a year on that footing, it being the intent and meaning of the parties hereto that the total sum payable by the lessees for galeage rents during each triennial period shall be as follows (namely):—If the galeages which would have been payable under article 7 of these presents, if article 8 had been omitted therefrom, shall exceed £——, then the amount of those galeages, and no more; but if the same shall be less than £——, then the sum of £——.

Wayleave rent.

11. The lessees shall pay to the lessor a wayleave rent of 1*d.* for every customary ton comprising 2,520 pounds of coal, culm, ironstone, blackband, fireclay, and other substances, the produce of any mines not hereby demised which shall be brought to the surface through the mines hereby demised, and the pits and shafts thereof, under the powers in that behalf hereinbefore contained.

Exemptions from galeage.

12. The coal and culm consumed at any stationary engine which may be employed for working the minerals hereby demised, or which shall be used at the ventilating furnaces, or otherwise consumed in raising the said minerals, shall be exempt from galeage; but if the lessees shall work any other minerals in conjunction with the demised minerals, the coal and culm used for the before-mentioned purposes shall be fairly apportioned to each property according to the quantity of minerals which may have been respectively worked therefrom.

13. All building stone used in and for the purposes of the

(*a*) Under this plan the overworkings of preceding years in the same averaging period are applicable to make good short workings in a subsequent year. The more common arrangement is that which is adopted in Precedent No. XXVI. See clauses 8, 9, *supra*, p. 127.

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mines hereby demised, and the works thereof, shall be exempted from galeage.

Surface rent.

14. THE LESSEES shall (in addition to the tenant's compensation for damage to crops) pay to the lessor a yearly rent of £—— for every acre of land the surface whereof shall be occupied or used by the lessees for any of the purposes of this demise, and so in proportion for any less quantity than an acre, the said surface rent to be paid by equal quarterly payments on the same days as the galeage rents are hereinbefore made payable, and the first quarterly payment thereof to be made on such of the said days as shall happen next after such occupation or use shall commence, and the last quarterly payment thereof to be made on such of the said days as shall happen next after such occupation or use shall have ceased: AND in case any difference of opinion shall arise as to what ought to be considered the occupation or use of the surface of any land for the purpose aforesaid, or as to the day on which such occupation or use shall have commenced, or as to the amount of rent or damage payable under the reservation aforesaid, the matter in difference shall be settled by arbitration.

Three-fourths of rents to be paid to lessor, and one-fourth to be paid to trustees as capital money.

15. THREE-FOURTH parts of the several rents hereinbefore reserved shall be paid by the lessees to the lessor, and the remaining one-fourth part thereof shall be paid by them to the said C. D., E. F., and G. H., or other the persons who shall for the time being be the trustees of the said settlement for the purposes of the Settled Land Acts, 1882 to 1890, to be set aside by such trustees as capital money arising under those Acts (*a*).

LESSEES' COVENANTS.

Covenant by lessees to pay rents, &c.

16. THE LESSEES hereby covenant with the lessor, and with the said C. D., E. F., and G. H., and other the trustees for the time being of the said settlement, for the purposes of the said Acts, that they, the lessees, will pay the rents hereinbefore reserved to the lessor and the said trustees in the proportions and at the times hereinbefore appointed in that behalf: AND

(*a*) It is apprehended that the lessees ought to pay to the trustees that portion of the rent which is required by sect. 11 of the Settled Land Act to be capitalized, and that they could not safely pay it to the tenant for life, leaving the latter to hand it over to the trustees or pay it into Court. See sect. 22.

the lessees hereby also covenant with the lessor to observe and perform all the provisions hereinafter contained, which are or ought on their part to be observed and performed.

17. (*Covenant to pay rates and taxes, supra*, p. 117.)

To work mines properly.

18. The lessees shall during the said term win and work the mines hereby demised regularly and properly according to the best and most approved mode of working similar mines in the county of ——, time lost by strikes or accidents excepted.

To leave a barrier.

19. The lessees shall leave a barrier of twenty yards in width in each and every seam of coal along every portion of the —— boundary of the mines hereby demised, and shall not work the same or diminish its width, except so far as may be necessary in the exercise of the privileges of outstroke granted by Article 5, without the consent in writing of the lessor or his agent.

To make trials of faults or dislocations.

20. If in working the minerals hereby demised any fault or dislocation shall at any time be discovered, the lessees (if required so to do by the lessor by notice in writing) shall at their own expense make and cause to be made proper and reasonable trials through such fault or dislocation, for the purpose of ascertaining whether or not the vein or seam of coal interfered with or intercepted, and for the time being in work, is workable beyond such fault or dislocation, and if such vein or seam shall be found workable, shall and will at their own expense continue the working thereof.

To put up weighing machines.

21. The lessees shall erect and maintain, at the entrance of each adit, pit, shaft, quarry, or working, or at some convenient place or places upon or as nearly adjacent to the demised premises as may be practicable, good and sufficient and properly constructed weighing machines, at which the whole of the minerals that may be worked, raised, and brought to bank out of the mines hereby demised, as well as any minerals brought from other mines by virtue of the power in that behalf hereinbefore granted, shall be accurately weighed, and daily accounts thereof kept in books suitable for the purpose.

To allow lessor to test same.

22. The lessor or his authorized agent shall be at liberty (but giving the lessees as little inconvenience as possible) to inspect the machines and weights which may be used for weighing the minerals worked out of or conveyed from, through,

OF MINES IN SOUTH WALES UNDER SETTLED LAND ACT.

over, or across the mines hereby demised, and to adopt such methods as may be deemed necessary for testing their accuracy.

Books and accounts to be accessible.

23. THE weighing machine books, and colliers' and quarrymen's accounts, recording the quantities of minerals worked, raised, or carried away from the premises, shall be open at all times during working hours to the inspection of the lessor or his agent, who shall be at liberty to make extracts therefrom or take copies of the same.

To deliver quarterly accounts to lessor.

24. THE LESSEES shall deliver to the lessor or his agent within fourteen days from each of the quarterly days hereinbefore appointed for payment of rent a perfect abstract from the books of account for the preceding three months, and shall verify the same, if required, by the statutory declaration of the clerk or book-keeper, and also of the actual manager of the lessees so far as his knowledge extends.

Lessor may employ a check clerk.

25. THE LESSOR, if he desires to do so, shall be at liberty to employ a check clerk to see all the minerals worked from the mines hereby demised or from other mines and subject to outstroke or wayleave rent brought out, and to keep an account thereof, and to check the returns and accounts of the lessees.

26. THE LESSEES shall preserve the mines hereby demised from all avoidable damage and injury, and keep all the levels, adits, drifts, shafts, pits, airways, watercourses, ponds, erections, engine-houses, sheds, workshops, and other conveniences, railroads and other roads and ways in good order, repair, and condition (except such of the works and buildings as shall from time to time become unnecessary for the further working of the said mines), and shall deliver up the same in such state and condition at the end or sooner determination of the said term.

Lessor may enter mines to inspect condition thereof.

27. THE LESSOR or his agent, servants, and workmen duly authorized shall be at liberty from time to time to enter into and upon and to inspect and survey the mines hereby demised and the works connected therewith, and also (so far as the lessees can grant this privilege) any adjoining or other mines of the lessees worked in connection with the mines hereby demised, and for those purposes to make use of the pits, shafts, levels, roads, horses, workmen, ropes, machinery, and other works or conveniences of the lessees, and shall for the purposes of such inspection and surveys have, free of cost to the lessor, the assistance of the lessees' resident manager, or one or more of their servants

or workmen having a competent knowledge of the lessees' workings. OF MINES IN SOUTH WALES UNDER SETTLED LAND ACT.

28. An accurate plan drawn to a scale of two chains to an inch of all the workings in the mines hereby demised, and also in any adjoining mines connected therewith by instroke or outstroke, shall be prepared and kept by the lessees, upon which the extent, position, and actual condition of the mines and premises shall from time to time, and at least once in every six months, be set forth and delineated, and of which the lessor or his agent shall be at liberty at all reasonable times to inspect and make copies. Plan.

29. The pits, drifts, adits, machinery, railways, and other works of the lessees shall be so secured that no injury may result therefrom to man or beast, and all tramways, railways, inclined planes, or other roads shall upon the requirement of the lessor be properly and securely fenced out from the properties and enclosures through which they may pass; and when any pits or shafts shall have become useless or unnecessary the lessees shall either fill up the same with earth or waste, or surround them with a well constructed wall of masonry at least six feet in height, or cover them with a good and sufficient arch of stone. Pits, &c. to be properly secured.

30. The lessees, unless authorized in writing so to do by the lessor, shall not extend their workings under any farm or other houses, cottages, or buildings now standing and being on the lands under which the mines hereby demised are, nor within a distance of ten yards on each side thereof, and in the event of any damage occurring to such houses, cottages, or buildings by the breach of this covenant, reasonable compensation shall be paid in respect of the same, and the lessor shall be kept fully and sufficiently indemnified from all actions or claims in respect thereof. Workings not to be carried under existing buildings.

31. The lessees shall not at any time during the said term grant to or suffer any person to use any wayleaves, drifts, levels, outstrokes, waterways, or other communications from, into, through, under, or over the mines hereby demised, and the works belonging thereto, without the consent in writing of the lessor or his agent having been first obtained, nor shall the lessees underlet or assign the mines hereby demised or any part thereof, or in any other way dispose of the same except by Lessees not to grant wayleaves or assign mines without consent of lessor;

OF MINES IN SOUTH WALES UNDER SETTLED LAND ACT.

but consent not to be unreasonably withheld.

testamentary disposition without the consent in writing of the lessor, which consent, in the event of all the covenants and provisions herein contained being duly observed and performed up to the period when the same shall be required to be given, shall not be withheld without substantial grounds of objection, and its being reasonably probable that such an assignment or underletting will be calculated to retard and interfere with the full development or efficient prosecution of the mining operations, or in some other manner prejudicially to affect the interests of the lessor, and in the event of any difference as to the operation of this clause it shall be settled and determined by arbitration in the manner hereinafter provided.

(*Lessors' covenants and general provisions as in No. XXV. or No. XXVI.*)

IN WITNESS, &c.

No. XXIX.

OF A BRICKFIELD.

LEASE *of a* BRICKFIELD.

Parties.

THIS INDENTURE, made the —— day of ——, 18—, BETWEEN A. B. of, &c. (*lessor*), of the one part, and C. D. of, &c. (*lessee*), of the other part, WITNESSETH AND DECLARES as follows:—

Demise of brickfield

with right to dig clay, &c.,

and to manufacture bricks.

1. IN consideration of the rents and lessee's covenants hereinafter reserved and contained, the said A. B. (hereinafter called "the lessor") hereby demises unto the said C. D. (hereinafter called "the lessee"), ALL that piece or parcel of land, &c. (*describe field*), TOGETHER with the liberty and right to dig and get out of the said land, clay, brick-earth, sand, and other materials used in the manufacture of bricks, and to manufacture the same into bricks, draining tiles, or other ware in and upon the said land, AND ALSO liberty and right for the purposes aforesaid to make and place in, over, and upon the said land, sheds, buildings, roads, drains, watercourses, and other works and conveniences, BUT so that no clay, earth, or other materials shall be dug

and no works carried on within six yards of the boundary fences on the south and west sides of the said land: To HOLD the same unto the lessee from the —— day of ——, 18—, for the term of —— years thence next ensuing, and subject to the provisions hereinafter contained. OF A BRICKFIELD.

2. THE LESSEE shall during the said term pay to the lessor for or in respect of the premises hereby demised the certain yearly rent of £——, by equal half-yearly payments on the —— day of —— and the —— day of —— in every year, the first payment to be made on the —— day of —— next, FOR and in respect of which rent the lessee may in each year manufacture on the said lands so many bricks, tiles, or other articles of ware as according to the rates hereinafter mentioned would produce for that year royalties amounting to £——. Certain rent.

3. THE LESSEE shall on the —— day of —— in every year pay to the lessor for or in respect of all bricks, draining tiles, and other ware manufactured during the preceding year on the said land over and above the number or quantity which the lessee is hereinbefore authorized to manufacture in respect of the said certain rent, the following rents or royalties, that is to say, a rent or royalty of two shillings sterling for each and every quantity of one thousand bricks or draining tiles, and a rent or royalty equivalent in amount to the sum of one shilling and fourpence for every twenty shillings in value thereof at the kiln of any article or ware other than bricks or draining tiles manufactured as aforesaid: PROVIDED ALWAYS that if in any one year the lessee shall manufacture on the said land less than the number of bricks, tiles, or other articles which he is hereinbefore authorized to manufacture in respect of the said certain rent, then and in every such case he may in any subsequent year or years of the said term manufacture so many bricks, tiles, or other articles as will make up the deficiency without paying any royalty or rent for the same beyond the certain rent, BUT the certain rent shall be always paid whatever may be the number of bricks manufactured. Royalty for bricks, &c. Average clause.

4. THE LESSEE hereby covenants with the lessor to pay the said rents at the times and in manner aforesaid, and also to observe and perform all the provisions hereinafter contained, which are or ought on his part to be observed and performed. Covenants by lessee to pay rent, rates, and taxes.

5. (*Covenant to pay rates and taxes, supra*, p. 117.)

OF A BRICKFIELD.

Not to use land for any other purpose than a brickfield.

6. THE LESSEE shall not use the land hereby demised for any other purpose than as a brickfield, and he shall manufacture all the clay and other materials gotten therefrom into bricks, tiles, or other ware on the said land and not elsewhere. All the bricks and draining tiles shall be of the common and ordinary size.

To keep proper accounts.

7. FOR the purpose of ascertaining the amount of rent payable for the time being as aforesaid, the lessee shall keep proper and correct books of account showing the number of bricks, tiles, and other articles manufactured on the said land, and shall from time to time deliver to the lessor or his agent a correct abstract of the said books of account for the then preceding year, and shall verify the same by the statutory declaration of himself or his foreman if required, and shall permit the lessor and his agent at all reasonable times to inspect the said books of account, and to take extracts therefrom.

To keep buildings, &c., in repair.

8. THE LESSEE shall at all times during the said term keep all sheds, buildings, kilns, and other erections now standing or which shall hereafter be erected or set up in or upon the said land under the authority of these presents, in good and substantial repair and condition, and the same in such good and substantial repair deliver up to the lessor at the end of the said term. And he shall at all times carry on the works hereby authorized in a proper and workmanlike manner, and keep indemnified the lessor from and against all actions, claims, and demands for or by reason of any injury to adjoining property or any nuisance or annoyance arising from the carrying on of the said works.

To carry on works properly.

Lessor may enter and inspect works.

9. IT shall be lawful for the lessor or his agent at all reasonable times during the said term to enter into and upon the land hereby demised for the purpose of inspecting the works therein.

Lessee to preserve trees, and to permit lessor to plant near hedgerows.

10. THE LESSEE shall not cut down, destroy, or injure any trees standing on the said land, and shall permit the lessor to plant trees on the said land within six yards of the hedgerows on the south and west sides thereof.

To restore land to original condition.

11. WHENEVER any land shall cease to be used for the purposes of this demise, the lessee shall restore the surface thereof to its original state and condition as far as is practicable, unless the lessor shall require him to leave the same in its actual state.

Not to remove any plant in last year.

12. THE LESSEE shall not during the last year of the said term remove or destroy any machinery or plant standing and

being on the said land, and used for the purposes of the works hereby authorized without the consent of the lessor, but shall keep the same on the said land or in or about the said works in order to enable the lessor to exercise the option of purchasing the same hereinafter conferred on him. OF A BRICKFIELD.

13. If at the expiration or other sooner determination of the term hereby granted, the lessor shall be desirous of purchasing all or any of the machinery and plant in and upon the said land which shall have been provided by the lessee for the purposes of the works hereby authorized, and shall signify his desire in that behalf by a notice in writing to be given to the lessee at his office on the said works, within one calendar month after the determination of the said term, then and in such case the said machinery and plant or such part thereof as the lessor shall elect to purchase as aforesaid shall be left by the lessee, and taken by the lessor at a price to be determined by arbitration in case of difference. Power for lessor to purchase plant.

14. The lessee shall not assign or underlet the land hereby demised or any part thereof, without the consent in writing of the lessor. Not to assign without licence.

15. The lessor hereby covenants with the lessee that the lessee paying the rents hereby reserved and observing and performing the covenants and conditions herein contained, and on his part to be observed and performed, shall peaceably and quietly hold and enjoy the premises hereby demised for and during the term hereby granted without any lawful interruption from or by the lessor or any person rightfully claiming from or under him. Lessor covenants for quiet enjoyment by lessee.

16. The lessor hereby also covenants with the lessee that the lessee may at any time within six calendar months after the expiration or sooner determination of the said term remove and carry away and convert to his own use all the machinery and plant which shall have been provided by him for the purposes of the works hereby authorized, and which the lessor shall not have purchased under the power in that behalf hereinafter given to him. Lessee may remove plant not purchased by lessor within six months from end of term.

17 *to* 21. (*Powers of distress and re-entry, Arbitration clause, and meaning of "lessor" and "lessee," as in Precedent No. XXV., Arts.* 24, 25, 29, *&* 31, *substituting "lessee" for "lessees," supra,* pp. 121, 122, 123.)

In witness, &c.

No. XXX.

OF STONE QUARRIES.

LEASE *of* STONE QUARRIES *and* CHALK *and* SAND PITS —COVENANT *by* LESSEE *to make a* ROAD, *and other* COVENANTS.

Parties.

THIS INDENTURE, made the —— day of ——, 18—, BETWEEN A. B. of, &c. (*lessor*), of the one part, and C. D. of, &c. (*lessee*), of the other part, WITNESSETH AND DECLARES as follows:—

Demise of quarries, &c.

1. IN consideration of the rents and lessee's covenants hereinafter reserved and contained, the said A. B. (hereinafter called "the lessor") hereby demises unto the said C. D. (hereinafter called "the lessee"): ALL those stone quarries and chalk pits in and under certain parcels of land called —— and ——, situate in the parish of ——, in the county of ——: AND ALSO all that sand pit situate and being at the north-west corner of a certain parcel of land called ——, and situate in —— as aforesaid, and which said quarries, chalk pits, and sand pit are now in the occupation of the lessee, and the said lands and certain other lands of the lessor adjoining thereto are delineated in the plan drawn in the margin of these presents, and are therein coloured pink: TO HOLD the same unto the lessee from the —— day of ——, for the term of —— years thence next ensuing.

Liberty to work and get chalk, &c.

2. THE LESSEE shall and may at all times during the said term work and get from or out of the lands coloured pink on the said plan by means of the aforesaid quarries and pits, so much chalk, fire-stone, hearth-stone, burr-stone, and sand as he shall think fit: PROVIDED ALWAYS that the precise places from or out of which the said chalk, stone, and sand shall be gotten, shall from time to time be set out and appointed for that purpose by the lessor or his agent, with liberty, however, for the lessee to object to any place so set out and appointed as not being suitable and convenient for the purposes aforesaid, and in such case the question whether the place objected to is suitable and convenient shall be settled by arbitration: AND if the decision shall be against the lessor, he or his agent shall thereupon set out and

Places out of which chalk, &c., to be got to be appointed by lessor or by reference to arbitration.

appoint some other place for the purpose aforesaid, and the lessee shall have the like right of objecting thereto, and of having the question settled by arbitration, and so on from time to time until the lessor or his agent shall set out and appoint some place for the purpose aforesaid, to which the lessee shall not object, or which, upon a reference to arbitration, shall be determined to be suitable and convenient for the purpose aforesaid.

Liberty to stack chalk, &c.;

3. THE LESSEE may from time to time during the said term lay, place, and stack in or upon any convenient part of the said lands all or any of the chalk, lime, stone, sand, and other produce to be gotten under the authority of these presents, and all earth and rubbish which shall be gotten, thrown up, or collected in carrying on the works hereby authorized: AND ALSO may carry and convey all such chalk, lime, stone, sand, and other produce, earth, and rubbish as aforesaid, and all materials used in or about the said works over or along the said lands between the said quarries and pits and the public highway, by means of the road hereinafter covenanted to be made by the lessee: AND ALSO may make, lay down, and place on the said lands such railways and tramways with proper sidings, and other conveniences as shall be necessary or convenient for carrying and conveying any such chalk, lime, stone, sand, and other produce, earth, rubbish, and materials as aforesaid, between the said quarries and pits and the —— Railway, and may use the same railways, tramways and sidings for the purposes aforesaid: AND ALSO may erect and set up on any convenient part of the said lands, two cottages for the residence of his foreman or workman employed in or about the said works, and such and so many sheds and buildings as he may deem necessary or convenient for carrying on the works hereby authorized, and to use the sheds and buildings now standing on the said lands for the like purposes: AND ALSO may erect and set up on such part or parts of the said lands as the lessor or his agent shall set out and appoint for the purpose (but not elsewhere) such and so many lime-kilns as the lessee may think necessary or expedient for the purpose of converting the said chalk into lime: AND ALSO may do all such other acts and things, and use all such other devices and means for carrying on the works hereby authorized, as shall or may be found necessary or convenient according to the most approved practice in the district.

to convey chalk, &c., over road;

to lay down railway, &c.;

to erect two cottages for residence of foreman and workman, and to erect sheds, &c.;

to set up lime-kilns in places to be applied by lessor;

to do other things, &c., for carrying on works.

OF STONE QUARRIES.

Reservations to lessor of liberty to use road, and to get chalk, &c. out of lands for use of his estate, but not from lessee's pits.

4. THE following liberties are reserved to the lessor, namely: liberty for the lessor and all persons authorized by him to use the road hereinafter covenanted to be made by the lessee either with or without horses, cattle, carts, and carriages: and also liberty for the lessor and all persons authorized by him to dig and get chalk, stone, and sand from or out of any part of the lands coloured pink on the said plan for the use of the estate or the lessor, but not for sale: BUT this liberty shall not enable the lessor, or any other person to dig or get chalk, stone, or sand from the quarries or pits of the lessee without his consent.

Certain rent.

Rent for stone.

5. THE following rents are hereby reserved for or in respect of the premises hereby demised, and shall be paid by the lessee to the lessor (namely), 1st, the yearly rent of £200 to be paid during the whole of the term hereby granted, by equal half-yearly payments on the —— day of ——, and the —— day of —— in every year, the first of such payments to be considered as payable on the —— day of ——, 18—: 2ndly, the rent or sum of 6*d.*, for every ton of stone over and above 10,000 tons which shall or may be gotten from or out of the said lands under the authority of this lease in any year of the said term after the —— day of ——, such royalty to be paid on the —— day of —— in every year, for and in respect of the stone gotten as aforesaid during the then preceding year, and to be in addition to the said yearly rent of £200: AND 3rdly, the yearly rent of £20 to be paid for and in respect of each and every lime-kiln exceeding the number of five, which the lessee shall erect or set up on the said lands for the purpose of converting the said chalk into lime to be paid half-yearly, the first payment thereof to be made on the first of the half-yearly days which shall happen next after the lessee shall have commenced erecting and building each and every such additional lime-kiln, and to be paid during the remainder of the said term.

Rent for every lime-kiln exceeding five.

Lessee covenants to pay rents, rates, and taxes.

6, 7. THE LESSEE hereby covenants, &c. (*to pay rents and observe provisions and pay rates and taxes, supra*, p. 147).

To make a road.

8. THE LESSEE shall forthwith commence, and with all convenient speed prosecute and complete at his own cost in a good and workmanlike manner, and to the satisfaction of the lessor or his agent, a hard and substantial road not less than fifteen yards wide from the said quarries and pits to —— Heath, the site and direction of the said road to be determined by the lessor or his

agent, and shall at all times during the said term, at his own cost, keep the said road in good and substantial repair and condition, and the same in such good repair and condition deliver up to the lessor at the end of the said term, and shall at all times during the said term permit the lessor and all persons authorized by him to use the said road, either with or without horses, cattle, carts, and carriages.

To keep account of all stone gotten.

9. For the purpose of ascertaining the amount of rent for stone payable under the above reservation in that behalf, the lessee shall, after the —— day of ——, keep proper and correct books of account, showing the amount of stone gotten from time to time under the authority of these presents, and shall, previously to the —— day of ——, in the year 18—, and in every subsequent year of the said term, deliver to the lessor or his agent a correct abstract of the said books of account for the then preceding year, and shall verify the same by the statutory declaration of himself or his foremen, if required: And shall permit the lessor and his agent at all reasonable times to inspect the said books of account to take extracts therefrom.

To keep cottages, &c., in repair.

10. The lessee shall at all times during the said term keep all cottages, sheds, buildings, lime-kilns, and other erections now standing, or which shall hereafter be erected or set up in or upon the said lands under the authority of these presents, in good and substantial repair and condition, and the same in such good and substantial repair deliver up to the lessor at the end of the said term.

To fence and guard the quarries, &c.

11. The lessee shall at all times during the said term well and effectually fence and guard the quarries, pits, railways, tramways, and other ways now existing, or which shall at any time during the said term be made under the authority of these presents, and shall do as little damage or injury as possible to the surface of the said lands in the exercise of the liberties hereby granted: And shall make full satisfaction to the tenants or occupiers of the said lands for any damage or loss which may be sustained by them by reason of any horses, cattle, sheep, or other animals falling into or getting on the said quarries, pits, railways, tramways, or other ways, or otherwise by the neglect or default of the lessee or his agent, servants, or workmen, the amount of such compensation to be settled by arbitration in case of difference.

OF STONE QUARRIES.

12. THE LESSEE shall at all times carry on the works hereby authorized in a proper and workmanlike manner, and after the best and most approved method of carrying on similar works in the neighbourhood.

To carry on works properly.

13. IT shall be lawful for the lessor or his agent at all reasonable times during the said term to enter into and upon the quarries and pits of the lessee, and to inspect the state and condition of the same, and of the works therein, and if any of the said works shall be found to be carried on in an improper and unworkmanlike manner, to give notice in writing to the lessee or his agent to rectify such improper working within ten days after such notice shall have been so given, within which time the lessee shall so far as practicable rectify the same.

Lessor may enter and inspect works.

14 to end. (*Lessee not to remove plant—power to lessor to purchase plant—lessee not to assign without licence—Covenants by lessor for quiet enjoyment by lessee, and that lessee may remove plant if not purchased—power of distress—power of re-entry—arbitration clause—meaning of "lessor" and "lessee"—as in last Precedent, supra*, pp. 148, 149.)

IN WITNESS, &c.

No. XXXI.

LEASE FOR LIVES.

LEASE *for* LIVES *on the dropping of a* LIFE *pursuant to a* COVENANT *for perpetual* RENEWAL *contained in a* LEASE *for* LIVES *which is* SURRENDERED.

Parties.

THIS INDENTURE, made, &c., BETWEEN A. B. of, &c. (*lessor*), of the one part, and C. D. of, &c. (*lessee*), of the other part (*Recite lease for lives of E., F., and G., and lives and life of survivors and survivor of them, and the covenant for renewal contained in the lease,—death of E.*): AND WHEREAS the said C. D. hath requested the said A. B. to grant to him the said C. D. a renewed lease of the said premises pursuant to the covenant for this purpose contained in the said lease, for the lives of F., G., and H. in consideration of a fine of £——: NOW

Application for renewed lease.

LEASE FOR LIVES.

THIS INDENTURE WITNESSETH, that in pursuance of the aforesaid covenant, and in consideration of the sum of £—— to the said A. B. paid by the said C. D. on or before the execution of these presents (*the receipt, &c.*), and in consideration of the surrender of the said recited lease, and of the rent and lessee's covenants hereinafter reserved and contained, he the said A. B. (hereinafter called "the lessor") hereby conveys unto the said C. D. (hereinafter called "the lessee"), ALL, &c. (*parcels*), TO HOLD the same unto the lessee from the date of these presents, for and during the lives of the said F., G., and H., and the lives and life of the survivors and survivor of them, YIELDING AND PAYING therefor during the said term the yearly rent of £——, by equal quarterly payments on the —— day of ——, the —— day of ——, the —— day of ——, and the —— day of ——, the first of such quarterly payments to be made on the —— day of ——. (*Covenant by lessee to pay rent, rates, and taxes during the said term, to keep in repair—to permit lessor to inspect—to insure*) : AND THE lessor hereby covenants with the lessee that in case, on the decease of any one of the persons for whose lives this lease is granted, the lessee shall, within six calendar months from the dropping of such life, give to the lessor, or leave at his usual or last known place of abode, a notice in writing requesting a new lease of the premises for the lives of the two survivors of such persons, and the life of one other person to be nominated in that behalf by the person or persons giving or leaving such notice, and shall within the said period pay the sum of £—— to the lessor, by way of fine for the renewal of such lease, then and in such case the lessor shall and will within such period as aforesaid, at the request and cost of the lessee, grant unto him, on the surrender of this present lease, a new lease of the said premises for the lives aforesaid, according to such notice, upon the same or the like terms, and under and subject to the same or the like covenants and provisions as are declared and contained in this present lease, including this covenant for renewal. (*Meaning of term "lessor" and "lessee," supra*, p. 61.)

Lessor grants premises to lessee for three lives.

Covenants by lessor to renew the lease on the dropping of a life.

IN WITNESS, &c.

No. XXXII.

OF RIGHT OF SPORTING.

LEASE *of a* RIGHT *of* SPORTING.

Parties.

THIS INDENTURE, made the —— day of ——, 18—, BETWEEN A. B. of, &c., of the one part, and C. D. of, &c., of the other part: WITNESSETH, that in consideration of the rent and lessee's covenants hereinafter reserved and contained,

Demise of right of sporting

THE said A. B. doth hereby demise unto the said C. D., ALL THAT the exclusive right of hunting, coursing, shooting, fishing, and sporting in, over, and upon the manors of, &c., AND ALSO all that the keeper's lodge situate at —— aforesaid, now in the occupation of —— (except and reserved out of these presents unto the said A. B., his heirs and assigns, the exclusive right of shooting and sporting in, over, and upon the several lands coloured red in the plan hereto annexed, and the exclusive right of fishing in the river A., between the points marked C. and D. on the said plan).

to lessee for seven years if he shall so long live.

To HOLD the said premises unto the said C. D., from the —— day of ——, last past, for and during the term of seven years thence next ensuing, if the said C. D. shall so long live, but subject as regards ground game to the rights of the tenants of the said lands or any of them under the Ground Game Act, 1880.

At yearly rent.

YIELDING AND PAYING therefor, the yearly rent of £——, by equal quarterly payments, on the 25th day of March, the 24th day of June, the 29th day of September, and the 25th day of December in each year, with a proportionate part of the said rent, up to the day of the decease of the said C. D. within the said term, the first payment to be made on the —— day of —— next.

Covenants by lessees,

AND the said C. D. doth hereby covenant with the said A. B., his heirs and assigns, in manner following, that is to say, that he, the said C. D., will

to pay rent,

pay the said rent at the times hereinbefore appointed for payment thereof, and will also pay all rates and taxes payable in respect of the said keeper's lodge:

and taxes in respect of keeper's lodge.

AND ALSO will, during the said term, at his own cost, keep at least one effective gamekeeper, who shall have the supervision of, and preserve the game upon, the said manors, and who shall live in the said keeper's lodge:

To keep a gamekeeper.

To preserve game and eggs.

AND ALSO that he the said C. D. will, at all times during the said term, keep up the head of game on the

said manors, and will to the best of his power preserve the eggs and young of game birds from being destroyed or injured: AND ALSO will not, at any time, assign or underlet, or otherwise part with this present lease, or the rights and privileges hereby demised, or any of them, to any person or persons whomsoever, without the consent in writing of the said A. B., his heirs or assigns, first had and obtained for that purpose. AND the said A. B. doth hereby covenant with the said C. D., that he paying the yearly rent hereby reserved, and observing and performing the covenants herein contained on his part, shall and may peaceably and quietly have, hold, and enjoy the rights and privileges hereby demised without any lawful interruption from or by the said A. B., or any person or persons claiming through, under, or in trust for him; AND that if this lease shall determine by the death of the said C. D. during the said term, he the said A. B., his heirs or assigns, will pay or allow to the executors, administrators, and assigns of the said C. D., all expenses incurred by the said C. D. in preserving and rearing the game, from the end of the preceding season up to the day of the death of the said C. D.

OF RIGHT OF SPORTING.

Not to assign or underlet without licence of lessor.

Covenant by lessor for quiet enjoyment by lessee.

And if lessee dies before end of term, to allow him expenses of preserving from end of preceding season.

IN WITNESS, &c.

No. XXXIII.

UNDERLEASE *of a* PART *of the* PROPERTY *comprised in the* ORIGINAL LEASE; COVENANTS *by* LESSOR *in the event of his* PURCHASING REVERSION *in* FEE SIMPLE, *or obtaining a* RENEWED LEASE, *to* SELL *such* REVERSION *or to grant a* RENEWED LEASE *to the* SUB-LESSEE.

UNDERLEASE OF PART OF LAND COMPRISED IN ORIGINAL LEASE, WITH SPECIAL STIPULATIONS.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*lessor*), of the one part, and C. D. of, &c. (*lessee*), of the other: WHEREAS by an indenture of lease dated the —— day of ——, and made between the Dean and Chapter of ——, of the one part, and the said A. B., of the other part, for the

Parties.

Recite original lease.

UNDERLEASE OF PART OF LAND COMPRISED IN ORIGINAL LEASE, WITH SPECIAL STIPULATIONS.

considerations therein mentioned, ALL that piece or parcel of land (*here describe the piece of land as described in the lease*), were demised unto the said A. B., from the —— day of —— then last past, for the term of twenty-one years, at the yearly rent of £——, and under and subject to the covenants and conditions in the said indenture of lease contained, and on the part of the lessee to be observed and performed: AND WHEREAS the said A. B. hath agreed with the said C. D. for the demise to him of the piece of land hereinafter described (being part of the said piece of land comprised in the said recited indenture of lease), for the unexpired residue of the said term of twenty-one years (wanting the last ten days thereof), upon the terms hereinafter mentioned: NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and in consideration of the sum of £—— to the said A. B. now paid by the said C. D. (the receipt whereof the said A. B. hereby acknowledges), and in consideration of the rent hereinafter reserved and the covenants of the said C. D., hereinafter contained, the said A. B. (hereinafter called "the sub-lessor") hereby demises unto the said C. D. (hereinafter called "the sub-lessee") ALL THAT piece or parcel of land (*describe the land to be underlet*): TO HOLD the same unto the sub-lessee for all the residue now unexpired of the said term of twenty-one years created by the said recited indenture of lease (except the last ten days of the said term), YIELDING AND PAYING therefor during the term hereby granted the yearly rent of 1*s.*: AND the sub-lessee hereby covenants with the sub-lessor that he the sub-lessee will, &c. (*Covenants by sub-lessee, corresponding with the covenants contained in the recited lease—power of re-entry in case rent shall be in arrear or covenants shall be broken—covenant by lessor for quiet enjoyment*): AND the sub-lessor hereby covenants with the sub-lessee that if during the continuance of this lease he the sub-lessor shall agree to purchase the fee simple of the premises comprised in the hereinbefore recited indenture of lease, or of any portion of the same premises which shall include the premises hereby demised, the said sub-lessor will forthwith inform the sub-lessee of such agreement and of the terms and conditions thereof, and it shall be lawful for the sub-lessee at any time within one calendar month after the receipt of such information to give to

Agreement to grant underlease of part of property.

Sub-demise of parcels

to sub-lessee for original term (wanting ten days).

Covenants by sub-lessee.

Covenant by sub-lessor that in the event of his purchasing reversion in fee simple, sub-lessee shall have option of purchasing same from him.

UNDERLEASE OF PART OF LAND COMPRISED IN ORIGINAL LEASE, WITH SPECIAL STIPULATIONS.

the sub-lessor a notice in writing stating the wish of the sub-lessee to purchase the fee simple of the lands hereby demised, at the price which the sub-lessor shall have agreed to pay for such fee simple if the said lands shall be the sole subject of his purchase, but in the event of other property being included therein, then at a proportionate part of such price, such proportion to be settled in case of dispute by two referees, one to be chosen by each party, and in case of their disagreement, by an umpire to be chosen by such two persons, but if either party shall neglect or refuse to appoint a referee within ten days after notice shall have been given to him by the other party so to do, then the referee appointed by such other party shall make a final decision alone: AND IT IS DECLARED that the sub-lessee shall pay all the costs and expenses of both parties of and incidental to the purchase by the sub-lessee, and also the costs and expenses of and incidental to the purchase by the sub-lessor if the lands hereby demised shall be the sole subject of the said purchase, but if not, then a proportionate part thereof, such proportion to be settled in case of dispute in manner aforesaid: AND IT IS ALSO DECLARED that the sub-lessee shall be bound by the same terms and conditions as to title and otherwise as the sub-lessor shall be bound by, and the purchase by the sub-lessee shall be completed at the same time as the purchase by the sub-lessor, if the information given by the sub-lessor to the sub-lessee of the said agreement to purchase shall be at least one calendar month before the time appointed for completion, but if not, then the sub-lessee shall be at liberty to postpone the completion of his purchase until the expiration of one calendar month from the receipt of such information as aforesaid: AND the sub-lessor hereby further covenants with the sub-lessee that if during the continuance of this underlease the sub-lessor shall obtain a renewed lease of the premises comprised in the hereinbefore recited indenture of lease, or of any portion of the said premises, which shall include the premises hereby demised, then and in such case the sub-lessor shall, at the request and cost of the sub-lessee, and upon the surrender by him of the present underlease, grant to him a new underlease of the premises hereby demised, for the residue of the term to be granted to the underlessor by such new lease (wanting the last ten days of such

Expenses to be paid by sub-lessee.

Covenant that if sub-lessor shall obtain a renewed lease, he will grant a renewed lease to sub-lessee.

UNDERLEASE OF PART OF LAND COMPRISED IN ORIGINAL LEASE, WITH SPECIAL STIPULATIONS.

term), at the rent of 1*s.* per annum, such new underlease to contain the same covenants and provisions on the part of the sub-lessee and sub-lessor respectively as are contained in this present indenture, including the covenants enabling the underlessee to purchase the fee simple, and to have a renewal of the underlease in case of a further renewal of the superior lease, but with such variations (if any) as may be rendered necessary if the renewed superior lease shall contain covenants different from those in the present superior lease, it being the intention of the parties hereto, that the covenant of the sub-lessee in the new underlease other than the covenant for payment of rent shall correspond to those of the sub-lessor in the new superior lease, so as to be a complete indemnity to the sub-lessor against such covenants so far as the same relate to the premises comprised in the underlease: AND IT IS AGREED AND DECLARED that upon any renewal of the underlease as aforesaid, the sub-lessee shall pay to the sub-lessor for such renewal of the underlease a fine equal in amount to the fine payable by the sub-lessor for the renewal of the superior lease, and shall also pay all other the costs and expenses attending the renewal of the superior lease if the premises comprised in the underlease shall be the sole subject of the new superior lease, but if not, then a proportionate part of the said fine, costs, and expenses, such proportion to be settled in case of dispute by two referees or their umpire in manner hereinbefore mentioned, and the sub-lessee shall also pay all the costs and expenses attending the renewal of the underlease: AND IT IS HEREBY LASTLY DECLARED that, whenever the context admits, the expressions "the sub-lessor" and "the sub-lessee" shall be deemed to include, besides the said A. B. and C. D., their respective executors, administrators, and assigns.

Sub-lessee to pay fine proportionate to that paid by sub-lessor, and proportionate part of costs.

IN WITNESS, &c.

No. XXXIV.

DEED *of* ARRANGEMENT *for extending the time for the* PERFORMANCE *of a* COVENANT *in a* LEASE *to complete* BUILDINGS (*by indorsement on lease*).

DEED TO EXTEND TIME FOR PERFORMANCE OF COVENANT.

THIS INDENTURE, made, &c., BETWEEN the within-named A. B. (hereinafter called "the lessor"), of the one part, and the within-named C. D. (hereinafter called "the lessee"), of the other part: WHEREAS the lessee has failed to perform the covenant on his part contained in the within-written indenture for the erection and completion before the —— day of —— of a good and substantial messuage or dwelling-house on each of the three several plots of ground comprised in the within-written indenture; and he has requested the lessor to extend the time for the erection and completion thereof to the —— day of ——, which the lessor has agreed to do: NOW THIS INDENTURE WITNESSETH, that it is hereby AGREED AND DECLARED between and by the parties hereto that the covenant contained in the within-written indenture for the erection and completion of three messuages or dwelling-houses on the plots of land thereby demised, and all other the provisions contained in the within-written indenture, shall be read and construed as if the —— day of ——, 18—, had been the time fixed by the said indenture for the completion of the said messuages or dwelling-houses instead of the —— day of ——, 18—.

Parties.

Recite that lessee has failed to perform covenant to build three messuages within a given time, and that he has requested lessor to extend the time.

Agreement that time shall be extended.

IN WITNESS, &c.

No. XXXV.

LICENCE BY LESSOR TO LESSEE.

LICENCE *by* LESSOR *to* LESSEE *to* ASSIGN *the* PREMISES *for the* RESIDUE *of the* TERM.

I, A. B. of, &c., hereby authorize you to assign the messuage and premises situate at, &c., comprised in a certain indenture dated the —— day of ——, and made between me of the one part and you of the other part, for the residue of the term of twenty-one years thereby created, but so that, save and except the assignment hereby authorized to be made, no future assignment or underlease of the said messuage or premises during the said term shall be made without the written consent of myself, my heirs or assigns.

As WITNESS my hand this —— day of ——.

A. B. (*lessor*).

To C. D. (*lessee*).

No. XXXVI.

LICENCE TO UNDERLET.

LICENCE (*a*) *from* LESSOR *to* LESSEE *to grant an* UNDERLEASE *of* PART *of the* DEMISED PREMISES *upon* CONDITION *that the* UNDERLESSEE *shall not* ASSIGN *or* UNDERLET *without the* CONSENT *of the* SUPERIOR LESSOR.

Parties. THIS INDENTURE, made the —— day of ——, 18—, BETWEEN A. B. of, &c. (*lessor*), of the one part, and C. D. of, &c. (*lessee*), of the other part: WHEREAS by an indenture of lease dated, &c., and made, &c., the said A. B. demised certain lands and hereditaments therein described unto the said C. D., his executors, administrators, and assigns, from the 24th day of June then last for the term of twenty-one years thence next ensuing, at the yearly rent of £——, and subject to the covenants and conditions therein contained, and on the lessee's part to be

Recital of lease.

(*a*) As this instrument contains a covenant, it should be under seal; but a simple licence to assign may be by writing only, unless a deed is expressly required by the lease.

LICENCE TO UNDERLET.

observed and performed, including a covenant not to assign or underlet without the licence or consent in writing of the said A. B., his heirs or assigns first had and obtained, and a proviso or condition for re-entry on breach of any of the said covenants therein contained: AND WHEREAS the said C. D. has requested the said A. B. to grant his licence and consent to such underlease as is hereinafter mentioned, which the said A. B. has agreed to do, subject to such covenants and conditions as are hereinafter contained: NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement the said A. B. doth hereby GIVE and GRANT to the said C. D. LICENCE and AUTHORITY to underlet to E. F. of, &c., ALL, &c. (*describe parcels*), being part of the premises demised by the said indenture of lease, from the —— day of —— last for the residue of the said term of twenty-one years granted by the said indenture of lease (except the last ten days thereof), SUCH underlease to be subject to the covenants and conditions contained in the said indenture of lease and on the part of the lessee to be observed and performed (except the covenant for payment of rent) so far as the same covenants and conditions relate to the premises to be comprised in such underlease, and to be made on the express condition that the said E. F., his executors, administrators, or assigns shall not at any time assign, underlet, or otherwise part with the last-mentioned premises, or any part thereof, for the whole or any part of the term to be granted by such underlease, without the licence or consent in writing of the said A. B., his heirs or assigns, first had and obtained: AND THIS INDENTURE ALSO WITNESSETH, that in consideration of the said licence hereinbefore granted, the said C. D. hereby covenants with the said A. B. that he the said C. D., his executors, administrators, or assigns will not, without the licence or consent in writing of the said A. B., his heirs or assigns, release or waive the condition against assignment or underletting upon which the said underlease is hereinbefore stipulated to be made, but will (unless otherwise directed by the said A. B., his heirs or assigns) re-enter on the premises comprised in the same underlease in case of any breach of such condition, and otherwise take full advantage thereof: PROVIDED ALWAYS, and it is hereby agreed and declared, that the proviso or condition for re-entry contained in the hereinbefore recited indenture of lease shall be exerciseable, not only

Request by lessee to lessor to grant consent to underlease.

Witnessing part.

Lessor grants to lessee licence to underlet part of demised premises for residue of original term, except ten days, subject to covenants and conditions of superior lease, and to a new condition against assignment or subletting without consent of superior lessor.

Covenant by lessee not to waive condition against assignment, &c., to be inserted in underlease without lessor's consent.

Proviso that condition of re-entry in superior lease shall extend

LICENCE TO UNDERLET.

in case of the breach of any of the covenants contained in the same indenture, but also in case of the breach of the covenant hereinbefore contained.

to a breach of the above covenant.

IN WITNESS, &c.

No. XXXVII.

LICENCE TO UNDERLESSEE TO ASSIGN.

LICENCE *by* SUPERIOR LESSOR *and* UNDERLESSOR *to an* UNDERLESSEE *to assign.*

Recite lease and under-lease.

WHEREAS (*recite lease from A. B. to C. D. as in last Precedent*): AND WHEREAS by an indenture of underlease dated, &c., and made, &c., the said C. D. (having first obtained the licence and consent in writing of the said A. B.) did demise all, &c. (*parcels*), unto the said E. F., for all the residue of the said term of twenty-one years granted by the said indenture of lease as aforesaid, except the last ten days thereof, at the yearly rent of £——, and subject to the covenants therein contained, and on the lessee's part to be observed and performed, being covenants to the like effect as the lessee's covenants contained in the said indenture of lease of the —— day of ——, and also a covenant by the said E. F. not to assign or underlet without the licence or consent in writing of the said C. D., his executors, administrators, or assigns, and also of the said A. B., his heirs or assigns, first had and obtained, and subject also to a condition for re-entry on breach of any of the said covenants: AND WHEREAS the said E. F. has requested the said A. B. and C. D. to grant their licence and consent to such assignment as is hereinafter mentioned, which they have agreed to do: NOW THEREFORE the said A. B. and C. D. do, and each of them doth, hereby give and grant to the said E. F. licence and authority to assign all the premises comprised in the said indenture of underlease of the —— day of ——, 18—, unto G. H. of, &c., subject to the rent, covenants, and conditions by and in the said indenture of underlease contained, and on the underlessee's part to be observed and performed, including the covenant against assigning and

Application by underlessee for licence to assign.

Superior lessor and under-lessor give licence to under-lessee to assign.

underletting without consent, which covenant shall remain in full force as against the said G. H., his executors, administrators, or assigns. LICENCE TO UNDERLESSEE TO ASSIGN.

As WITNESS the hands of the said A. B. and C. D. this —— day of ——.

No. XXXVIII.

LICENCE *by a* LORD *of a* MANOR *to his* COPYHOLD TENANT *to* LEASE *for twenty-one* YEARS. LICENCE BY LORD OF MANOR TO COPYHOLD TENANT.

I, A. B. of, &c., the lord of the manor of ——, in the county of ——, hereby authorize you to demise the copyhold messuage or tenement, situate, &c. (to which you were admitted tenant at a Court held for the said manor on the —— day of ——), for a term of twenty-one years, to be computed from the —— day of —— now next ensuing.

As WITNESS my hand this —— day of ——.

A. B. (*lord of the manor*).

To C. D. (*tenant*).

No. XXXIX.

NOTICE *to quit by a* LANDLORD *to a* TENANT *from year to year.* BY LANDLORD TO TENANT.

You are hereby required to quit and deliver up on the —— day of ——, 18— [or on other the day on which the current year of your tenancy will expire next after the end of half a year (*a*) from the time of your being served with this notice (*b*)], the possession of the messuage, &c. (*describe the property shortly*), which you now hold of —— (*landlord*). Dated the —— day of ——.

A. B. (*agent for the said landlord*).

To C. D. (*tenant*).

(*a*) If a year's notice is requisite (see the Agricultural Holdings (England) Act, 1883, s. 33), substitute here "a year" for "half a year."

(*b*) The words in brackets will be inserted wherever there is any doubt as to the day on which the tenancy commenced.

No. XL.

BY TENANT TO LANDLORD.

NOTICE *to quit by* TENANT *from year to year to* LANDLORD.

I HEREBY give you notice that I shall quit and deliver up on the —— day of ——, 18— [or otherwise on the day on which the current year of my tenancy will expire next after the end of half a year (*c*) from the time of your being served with this notice (*d*)], the possession of the messuage, &c. (*describe the property shortly*), which I now hold of you as a yearly tenant. Dated the —— day of ——.

A. B. (*tenant*).

To C. D. (*landlord*).

No. XLI.

TO DETERMINE A LEASE.

NOTICE *by* TENANT *to determine a* LEASE.

I HEREBY give you notice that, in pursuance of the power for this purpose given to me by the indenture of lease dated the —— day of ——, and made between you of the one part and me of the other part, it is my intention to determine the lease thereby made on the —— day of —— next, and I shall therefore quit and deliver up possession to you of the messuage and premises situate at, &c., comprised in the said indenture of lease on the said —— day of ——.

Dated the —— day of ——.

A. B. (*tenant*).

To C. D. (*landlord*).

(*c*) See p. 165, note (*a*). (*d*) See p. 165, note (*b*).

No. XLII.

NOTICE *by a* LESSOR *to his* LESSEE *requiring him to put the* PREMISES *in* REPAIR *pursuant to a* COVENANT *contained in the* LEASE. TO TENANT TO REPAIR.

I HEREBY give you notice and require that in pursuance of the covenant in that behalf contained in the indenture of lease dated the —— day of ——, under which you hold the messuage and premises, No., &c. (*describing the premises shortly*), you do and execute, within six calendar months from the date hereof, the repairs in and upon the said messuage and premises, which are specified in the schedule to this notice.

A. B. (*landlord*).

To C. D. (*tenant*).

THE SCHEDULE ABOVE REFERRED TO.

No. XLIII.

NOTICE *by* LESSEE *to* LESSOR *of Election to Purchase the* FREEHOLD *and* INHERITANCE *of Premises, pursuant to a Power contained in the Lease for this purpose* (*a*). OF ELECTION TO PURCHASE.

I HEREBY give you notice that, pursuant to the power for this purpose given to me by an indenture of lease, dated the —— day of ——, whereby certain hereditaments and premises, situate, &c., were demised by you to me for the term of —— years, I elect and agree to purchase the said hereditaments and premises, and the inheritance thereof in fee simple, at the price of £——, and to pay the purchase-money, and in all respects to comply with the terms prescribed by the said indenture of lease in respect of such purchase by me; and I request you, on or before the expiration of one calendar month from the date hereof, to make out and deliver to me an abstract of the title to the said hereditaments and premises, according to the stipulation for this purpose contained in the said indenture of lease.

As WITNESS my hand this —— day of ——.

C. D. (*lessee*).

To A. B. (*lessor*).

(*a*) *Supra*, p. 75.

No. XLIV.

TO LESSEE OF BREACHES.

NOTICE *by* LESSOR *to* LESSEE *under* SECTION 14 *of the* CONVEYANCING ACT, 1881, *requiring him to* REMEDY BREACHES *of* COVENANT *and pay* COMPENSATION.

To C. D. of, &c., the lessee of the messuage and premises known as, &c. (*describing it shortly*), comprised in an indenture of lease dated, &c., and made, &c. (*date and parties*).

As solicitors and agents for and on behalf of A. B. of, &c. (*lessor*), being the person entitled to the reversion of the above-mentioned premises expectant on the said lease, WE HEREBY GIVE YOU NOTICE that you have committed breaches of the covenants contained in the said lease, namely; 1st, that you have not kept the premises in good and substantial repair; 2ndly, that you have not painted the outside wood and iron work of the said premises with two coats of good oil colour once in every four years; 3rdly, that you have not painted such parts of the inside of the said premises as have been usually painted with two coats of good oil colour once in every seven years (*or whatever the breaches complained of are*): AND WE HEREBY REQUIRE YOU to remedy the said breaches by executing and doing the repairs and things specified in the schedule hereto within three calendar months from this date: AND WE ALSO REQUIRE YOU to pay to the said A. B. by way of compensation for the said breaches the sum of £——, being the costs and expenses incurred by him for surveyors' fees and solicitors' charges in respect of the said breaches (*a*): AND WE HEREBY FURTHER GIVE YOU NOTICE that if you make default in remedying the aforesaid breaches of covenant in manner above mentioned, or in making the compensation hereby required, the said A. B. will enter and take possession of the said premises.

Notice to lessee specifying breaches,

and requiring him to remedy same by doing works specified in schedule,

and to pay compensation.

Dated this —— day of ——, 18—.

THE SCHEDULE ABOVE REFERRED TO.

(*To specify the work to be done.*)

(*a*) See Conveyancing Act, 1892, s. 2. A notice is good although it does not claim compensation. Lock *v.* Pearce, (1892) 2 Ch. 328.

No. XLV.

CONDITIONS *on the* LETTING *by* AUCTION *of* BUILDING LAND *in* LOTS.

OF BUILDING LAND IN LOTS.

1. THE LESSORS will subject to these conditions grant to the highest bidder a lease of each of the lots described in the particulars for a term of ninety-nine years from the —— day of ——, 18—, at a rent for the first twelve months of the said term of a peppercorn and at a yearly rent for the residue of the said term equal to the amount of the highest accepted bidding. THE LESSORS reserve the right to fix a reserved or minimum rent and to make biddings by themselves or their agents, but subject thereto the highest bidder shall be entitled to a lease, and if any dispute occur concerning any bidding the property shall be immediately put up again at the last undisputed bidding.

Lease to be granted to highest bidder.

2. No bidder shall advance a less sum at any bidding than the sum fixed by the auctioneer at the time of putting up the property. No bidding shall be retracted.

Advance on bidding.

3. THE person declared to be entitled to a lease (hereinafter called "the purchaser") shall immediately thereupon sign the annexed contract and at the same time pay to the lessors' solicitors by way of deposit a sum equal to the amount of a year's rent, which payment shall (subject to these conditions) be accepted by the lessors in discharge of the rent for the second year of the said term.

Highest bidder to sign contract and pay deposit.

4. THE purchaser shall not require the production of, or investigate, or make any objection or requisition in respect of the title of the lessors or of their power to grant the proposed lease.

Title to be accepted.

5. THE purchaser shall be let into possession of the premises on or before the —— day of ——, 18—, but the lessors may previously thereto require the purchaser to furnish them with satisfactory references or other evidence of his solvency, and if he shall neglect or refuse to do so the lessors may by notice in writing rescind this contract, in which case the deposit shall be repaid to the purchaser but without interest, costs, or compensation. The purchaser shall within one month of his taking

Time for taking possession.

Purchaser to give references, and in case of default vendor may rescind.

OF BUILDING LAND IN LOTS.

possession erect and maintain round his lot or lots a post and rail or other fence to the satisfaction of the lessors' surveyor.

Purchaser to submit plans, &c.

6. THE purchaser shall on or before the —— day of ——, 18—, submit to the lessors' surveyor for his approval all necessary plans, elevations, and sections of the buildings proposed to be erected, and full specifications of the construction of the said buildings and the materials to be used therein, and shall make such alterations in the said plans, elevations, sections, and specifications as the said surveyor may require, and the said drawings shall be signed by the purchaser and the said surveyor and deposited with the said surveyor, and shall thenceforth be binding on both parties. The purchaser shall pay to the said surveyor a fee of three guineas for each house on his signing the plans as approved.

Purchaser to erect buildings.

7. THE purchaser shall erect the buildings in a good and substantial manner and in accordance with the drawings and specifications approved as aforesaid, and shall erect and roof in the same before the —— day of ——, 18—, and shall completely finish the same fit for occupation and use on or before the —— day of ——, 18—, to the approval of the surveyor to the lessors in all respects. No sand, earth, clay, loam, or gravel shall be dug out except so far as may be necessary for the performance of the works to be executed under these conditions.

Power to lessors' surveyor to enter.

8. THE said surveyor or his agents may enter upon the said buildings at any time until completion. Any portion of any building which is not built in accordance with the approved plan and specification shall be amended or rebuilt on notice in writing being given by the said surveyor.

Purchaser to insure buildings while in progress.

9. THE purchaser shall during the erection of the buildings insure and keep insured the same for the full value thereof in the joint names of the lessors and the purchaser in an office to be approved by the lessors, and shall produce the policies for such insurance or the receipts for the premiums thereon when required. All moneys received by virtue of such insurance are to be laid out in rebuilding or reinstating the buildings.

Lease to be granted on certificate of surveyor.

10. UPON a certificate signed by the said surveyor that the carcase of the building has been completed and roofed in within the time limited by condition 7 and to his satisfaction, and upon payment by the purchaser of the sum of £—— for the costs of

the lease and counterpart in addition to the stamp duties and the sum of £—— for the surveyor's fee for putting plans upon such lease and counterpart, the lessors will grant to the purchaser, and he will accept, a lease of the property and the buildings thereon for such term and at such rent as is mentioned in condition 1.

Lease to be prepared by lessors' solicitors, and as to form of lease.

11. The said lease shall be prepared by the lessors' solicitors, and shall be in the form of a draft which will be produced at the time of sale, and may be inspected at their offices for seven days before the sale.

Power to lessors to rescind.

12. If the purchaser shall not complete the carcase of the building, or shall not completely finish the building fit for habitation and use, by the times respectively limited for these purposes by these conditions, or shall refuse or neglect to take up and pay for the said lease or to execute and deliver the counterpart thereof, and in these respects where any time is by these conditions fixed for the performance or observance of any conditions or act time shall be of the essence of the contract, the deposit paid by the purchaser shall be absolutely forfeited to the lessors, who shall have full power to resume possession of the property and to appropriate and become absolute owners of all buildings then standing thereon and of all materials and things then remaining thereon, and to re-let the same premises and otherwise deal with the same as fully in all respects as if the contract with the purchaser had never been made, and all expenses attending such re-letting shall be paid on demand by the defaulter to the lessors, and in case of non-payment shall be recoverable as liquidated damages, but this condition is without prejudice to the right of the lessors to recover any arrears of rent or other sums then due from the purchaser and without prejudice to any rights or remedies which the lessors might otherwise have for breach of these conditions or any of them.

13. Each purchaser shall have the right of purchasing the fee simple at twenty-five years' purchase of the ground rent if the said right shall be claimed within twelve months from the —— day of ——, 18—. In the event of any purchaser claiming such right he shall sign an agreement for purchase already prepared by the vendors' solicitors and a copy of which will be produced at the sale, and such purchase shall be completed within three months from the date of such claim.

OF BUILDING LAND IN LOTS.

MEMORANDUM. At the letting by auction this day of the property comprised in the above particulars, A. B. of —— was the highest bidder for and was declared the purchaser of lot —— at the rent of £——, and the said A. B. has paid to C. D. as agent for ——, the lessors, the sum of £—— by way of deposit, as the said C. D. hereby acknowledges: And the said A. B., and the said C. D. on behalf of the lessors, hereby agree to observe and perform the above conditions.

C. D. (*vendors' agent*).

A. B. (*purchaser*).

TRUSTEES (*a*).

Division of subject.

It is proposed in this Dissertation to consider—I. The nature of a trust and the different kinds of trusts. II. The transmission of powers and trusts. III. The powers and duties of trustees for sale. IV. Purchases by a trustee from himself or from his *cestui que trust.* V. The powers and duties of trustees as regards the investment of trust moneys, and the management of the trust property. VI. Disclaimer. VII. Appointments of new trustees, and the powers conferred by statute for this purpose. VIII. The provisions of the Trustee Relief Acts. IX. Miscellaneous points relating to Trustees.

I. *The nature of a trust and the different kinds of trusts.*

Definition of a trust.

A trust may be defined as an obligation attached to the ownership of real or personal property or of some estate in, or power over, real or personal property, binding the person in whom such property, estate, or power is vested, to hold or exercise it for the benefit of some other person or persons, and which obligation is enforceable by means of the equitable jurisdiction of the Court.

Bare trust.

A trust may be a bare trust, or an active trust. A bare trust is where the instrument imposes on the

(*a*) *Settlements* form the next class of instruments of which precedents are given in this collection. As the objects of a settlement usually require the intervention of trustees, and as marriage is the ordinary occasion of a settlement, two introductory dissertations, the one on the powers, estates, duties, and responsibilities of *trustees*, and the other on the law affecting the relation of *husband and wife* and their interests in each other's property, are here inserted.

trustee no duty beyond that implied by law from the bare relation of trustee and *cestui que trust*, *e.g.*, where land is vested in A. in trust for B., the simple duty of A. being to convey the land to B., or according to his direction, whenever required so to do, and in the meantime to permit him to receive the rents and profits.

Active trust.

An *active* trust is where the instrument imposes on the trustee some special duty beyond the simple obligation above referred to, *e.g.*, a trust to sell, or to manage, or to receive the rents and apply them in a particular manner.

How an active trust may become a bare trust.

A trust originally active may become a bare trust, either by reason of all the special duties having been performed, or by reason of the obligation to perform such duties having been put an end to by the act of all the persons beneficially interested in their performance, which act is usually called an election. Thus, if land is given to a trustee in trust to apply the rents during the minority of A. for his maintenance, and on his attaining twenty-one in trust for A. in fee simple, the trust becomes a bare trust so soon as A. attains twenty-one. Again, if land is vested in a trustee in trust to sell and divide the proceeds between a number of persons, all of whom, being *sui juris*, join in requesting him not to sell but to convey the land to them as real estate, the trust from the date of such request becomes a bare trust.

Election.

Bare trustee, as the term is used in recent Acts.

The foregoing description of a bare trust naturally leads up to a definition of the term "bare trustee," as used in sect. 6 of the Vendor and Purchaser Act, 1874, and in sect. 48 of the Land Transfer Act, 1875 (which last-mentioned section is, however, repealed as regards any trustee dying after the 31st December, 1881 (*b*)). It is submitted that a bare trustee may for the purposes of these Acts be defined as "a trustee, who has no duties to perform beyond the simple obligation to convey the land to or according to the direction of his *cestui que trust*, whenever required so to do, and in the meantime to permit him to receive the rents and

(*b*) Conveyancing Act, 1881, s. 30.

profits" (*c*). In accordance with the above definition, it was held in a recent case that a married woman, being a devisee in trust for sale under a will, was, after a sale by the Court in an administration action, a bare trustee for the purchaser (*d*).

Express and constructive trusts.

Trusts may be also divided into *express* trusts, and *implied*, or *constructive* trusts, and this distinction is rendered important by sect. 25 of the Statute of Limitations, 3 & 4 Will. 4, c. 27, which excepts express trusts from the operation of the general enactment.

What is an express trust.

An *express* trust has been defined to be a trust expressly declared by a deed, will, or other written instrument (*e*), and this definition seems correct and exhaustive as applied to land. But an express trust may be created of chattels or personal property without any writing, as by a deposit of them with a factor or agent for a particular purpose (*f*).

(*c*) Messrs. Dart and Barber (Dart V. & P. 5th ed. p. 517) conclude that the term will be held to mean "a trustee to whose office no duties were originally attached, or who, although such duties were originally attached to his office, would, on the requisition of his *cestuis que trust*, be compellable in equity to convey the estate to them, or by their direction, *and has been requested by them so to do*." This definition has been approved by V.-C. Hall with the omission of the words in italics. Christie *v.* Ovington, L. R. 1 C. D. 279.

It is submitted that Messrs. Dart and Barber's definition is not quite correct, either with or without the words in italics proposed to be omitted by the Vice-Chancellor.

Suppose land to be vested in A. in fee simple in trust to sell and divide the proceeds between B. and C., it is clear that B. and C. being *sui juris* might require A. to convey the land to them, and it is apprehended that until such requisition is made he is not a bare trustee. On the other hand, if land is vested in A. in fee simple in trust for B. in fee simple, there can be no doubt that A. is a bare trustee, even though he has not been requested to convey the legal estate to B. It is submitted that Messrs. Dart and Barber's definition should run thus: "A trustee who has no duties attached to his office which remain to be performed, and who would on the requisition of his *cestuis que trust* be compellable in equity to convey the legal estate to them, or according to their direction." This is very similar to the definition in the text. See Morgan *v.* Swansea Urban Authority, L. R. 9 C. D. 582, in which Jessel, M. R., seemed to think that a bare trustee meant a trustee without any beneficial interest; but this is not the ordinary acceptation of the term among conveyancers, and in a recent case (*In re* Cunningham, (1891) 2 Ch. 567), Stirling, J., has stated that he prefers V.-C. Hall's definition to that of Jessel, M. R.

(*d*) *Re* Docwra, 29 C. D. 692.

(*e*) Petre *v.* Petre, 1 Drew. 393.

(*f*) Burdick *v.* Garrick, L. R. 5 Ch. 233; Banner *v.* Berridge, 18 C. D. 264.

Instances of implied or constructive trusts.

An *implied* or *constructive* trust is one arising by implication or construction of law from certain circumstances.

Purchase by A. in name of B., unless an intention to make a gift can be inferred from relationship, or other circumstances.

Thus, if A. purchases land in the name of B. and provides the purchase-money, or if he voluntarily transfers stock into the name of B. or the joint names of himself and B., B. will be deemed a trustee for A. (*g*), unless A. is B.'s husband (*h*), or father (*i*), or stands to B. *in loco parentis* (*k*), in which case the purchase or transfer will be considered as an advancement in consideration of the relationship, or unless it is shown by evidence or may be presumed from the circumstances that a gift from A. to B. was intended (*l*).

Resulting trust.

Again, if land is conveyed to a trustee, upon trusts which partly fail or do not exhaust the whole legal interests conveyed, there will, as a general rule, be an implied trust to the extent of the undisposed-of interest for the grantor, which trust is usually called a resulting trust. Again, after a contract for sale of land, the vendor is deemed a trustee for the purchaser subject to the payment of the purchase-money. So also it is a rule that a trustee cannot derive any personal advantage from the administration of the trust property, and consequently, if a trustee renews a lease in his own name, he will be deemed to hold the new lease for the benefit of his *cestui que trust.*

Renewal of lease by trustee in his own name.

Against whom a trust may be enforced.

A trust may be enforced against the person in whom it was originally reposed, and all persons deriving title to the property under him, whether by descent, representation, conveyance, or devise, other than purchasers for valuable consideration without notice of the trust.

On death or disclaimer of trustee appointed by will, legal estate descends to heir, subject to trust.

If a testator leaves property upon trust, and the trustee dies in his lifetime or disclaims, the legal estate will devolve on the heir-at-law, who will take it subject to the trust.

(*g*) Cripps *v.* Jee, 4 B. C. C. 478.
(*h*) Glaister *v.* Hewer, 8 Ves. 199.
(*i*) Mumma *v.* Mumma, 2 Vern. 19; Sayre *v.* Hughes, L. R. 5 Eq. 376; Hepworth *v.* Hepworth, L. R. 11 Eq. 10.
(*k*) Currant *v.* Jago, 1 Coll. 261.
(*l*) Batstone *v.* Salter, L. R. 10 Ch. 431; Standing *v.* Bowring, 27 C. D. 341; 31 C. D. 282.

II. *The transmission of powers and trusts.*

Power when exercisable by survivors.

A power, properly so called, *i.e.*, an authority enabling the donees to revoke or alter interests existing in default of and until its exercise, must be strictly followed, and can only be exercised by the persons named or indicated for that purpose by the instrument creating it. Thus a power of this kind given to several persons by name and their heirs cannot be exercised by the survivors, and this is so even when the persons so named are trustees (*m*), except in cases coming within sect. 38 of the Conveyancing Act, 1881. But a power given to persons by some general description, as "my trustees," and not by their names, may (independently of the Act) be exercised by the survivors, or other the persons answering the description, so long as the plural number remains (*n*). And it is now provided by the Conveyancing Act, 1881, s. 38, with respect to executorships and trusts created after the 31st December, 1881, that where a power or trust is given to or vested in two or more executors or trustees jointly, then, unless the contrary is expressed, the same may be exercised or performed by the survivors or survivor of them for the time being. In a case where a testator gave a power to his "said trustees," and the survivor of them, and one disclaimed, it was held that the sole acting trustee could exercise it (*o*).

Trust follows the estate.

A trust, as distinguished from a mere power, follows the estate, and is exercisable by the persons or person on whom the estate devolves by law. Thus, if land is devised to two or more persons in trust to sell (*p*), or in trust that they or their heirs and assigns shall sell, the trust will be exercisable by the survivors or survivor, and by the heir of the survivor, if he has died

(*m*) Townsend *v.* Wilson, 1 B. & Ald. 608; Hall *v.* Dewes, Jacob, 189.

(*n*) 1 Sug. Pow. 144; Byam *v.* Byam, 19 Beav. 58.

(*o*) Eaton *v.* Smith, 2 Beav. 236.

(*p*) Lane *v.* Debenham, 11 Hare, 188; Watson *v.* Pearson, 2 Exch. R. 481.

before the 1st January, 1882, intestate as to trust estates (*l*). And in a case where the devise was to the trustees, their *respective* heirs and assigns, upon trust that they, their *respective* heirs and assigns, should sell, the word "respective" was rejected, and it was held that the survivor might perform the trust (*m*).

Trustee cannot delegate the trust by act *inter vivos* except under power to appoint new trustees.

It does not follow that a trustee by vesting the trust property in another by his own act can delegate to that other the duty of executing the trust. On the contrary, it is clear that he cannot do so, by act *inter vivos* (*n*), except under a power of appointing new trustees contained in the trust instrument, or the statutory power for that purpose. Whether, before the recent Act, he could do so by will, has been the subject of several cases.

Devisee of trustee can execute trust, if word "assigns" is used. If word "assigns" is omitted, held in some cases that he cannot.

In *Cooke* v. *Crawford* (*o*), there was a gift to trustees in trust that they and the survivor of them and the heirs of such survivor should sell, and it was held that the last surviving trustee was not authorized to devise the trust estate, and consequently that his devisee could not sell. In *Titley* v. *Wolstenholme* (*p*), the trust was made exercisable by the survivor of the trustees, his heirs and *assigns*, and it was held in this case that the devisee could execute the trust. Since these decisions it has generally been considered that the right of the devisee to succeed to the trusteeship depends on whether "assigns" are mentioned in the trust instrument as among the persons by whom the trust is exercisable (*q*), and in several cases where the word "assigns" was omitted, the Court has declined to compel a purchaser to accept a title from the devisee. It has also been held that where in the absence of the word "assigns" a trustee has devised the trust estate, neither the devisee, nor the heir or personal representative, can execute the trust; the former because not

(*l*) *Re* Morton and Hallett, L. R. 15 C. D. 143.
(*m*) Jones *v.* Price, 11 Sim. 537.
(*n*) Bradford *v.* Belfield, 2 Sim. 264.
(*o*) 13 Sim. 91.
(*p*) 7 Beav. 425.
(*q*) Hall *v.* May, 3 K. & J. 585; Ashton *v.* Wood, 3 S. & G. 436; Stevens *v.* Austin, 3 E. & E. 436; Wilson *v.* Bennett, 5 D. & S. 475; *Re* Burtt's Estate, 1 Drew. 319.

within the terms of the trust, and the latter because he has not the legal estate (*r*).

Decision of Jessel, M.R., in favour of devisee notwithstanding absence of word "assigns."

It must be borne in mind that in all the cases above referred to, the question arose between vendor and purchaser, and, according to the then practice of the Court, it was a sufficient reason for deciding in favour of a purchaser that the title was open to reasonable doubt. In a recent case (*s*) where real estate was devised to trustees and their heirs (omitting "assigns") in trust to sell, Jessel, M.R., after noticing that according to the altered practice he was bound to decide the question between vendor and purchaser, arrived at the conclusion that *Cooke* v. *Crawford* was not confirmed by any of the subsequent cases, and that it was irreconcilable with and impliedly overruled by *Titley* v. *Wolstenholme;* and he decided in favour of the devisee on the broad ground that the person who takes the estate should be the person to execute the trust, and that inasmuch as the founder of the trust could not have reposed personal confidence in the trustee's unascertained heir any more than in his unascertained devisee, there was no reason why the latter should not be allowed to succeed to the trusteeship as well as the former. But in a still more recent case (*t*), the Lords Justices of Appeal intimated an opinion, though it was not necessary to decide the point, that *Cooke* v. *Crawford* was still a binding authority, so that, in cases not within the recent Act, the right of the devisee to execute a trust, which by the terms of the instrument is not made exercisable by assigns, must be considered as still doubtful.

M. R.'s decision doubted by Lords Justices.

Question still doubtful.

(*r*) Wilson *v.* Bennett, 5 D. & S. 475; *Re* Burtt's Estate, 1 Drew. 319. It is difficult to understand the ground of these decisions. If the founder of the trust intended that the heir or legal personal representative should succeed to the trusteeship, and that the trustees should not be allowed to defeat this intention by a devise, the natural conclusion would be that the irregularity might have been cured by the devisee conveying the legal estate so as to vest it in the person on whom it ought to have been allowed to devolve, or by his joining with that person in conveying it to a purchaser.

(*s*) Osborne *v.* Rowlett, 13 C. D. 774.

(*t*) Morton *v.* Hallett, 15 C. D. 143.

By recent Act trust estate devolves on personal representatives of deceased trustee.

By the Conveyancing Act, 1881, section 30, it is provided, as regards a trustee dying after the 31st December, 1881, that "where an estate or interest of inheritance in any hereditaments, corporeal or incorporeal, is vested on any trust, in any person solely, the same shall, on his death, notwithstanding any testamentary disposition, devolve to and become vested in his personal representatives from time to time, in like manner as if the same were a chattel real; and accordingly all the like powers, for one only of several joint personal representatives, as well as for a single personal representative, and for all the personal representatives together, to dispose of and otherwise deal with the same, shall belong to his personal representatives from time to time, with all the like incidents, but subject to all the like rights, equities, and obligations, as if the same were a chattel real; and, for the purposes of this section, the personal representatives, for the time being, of the deceased, shall be deemed in law his heirs and assigns, within the meaning of all trusts and powers."

The above enactment applies to all trustees, and not bare trustees only, and sect. 48 of the Land Transfer Act, 1875, is repealed, as to cases occurring after 31st December, 1881.

But not a power unaccompanied by any estate.

The effect of the above enactment is that upon the death of a trustee dying after the 31st December, 1881, the legal estate in the trust property, and also the right and obligation to exercise the trusts, pass to his personal representatives. But a mere power, unaccompanied by an estate in the land, is not affected by the section. If, therefore, by a strict settlement a power of sale and exchange is vested in trustees without the addition of the words, "and the survivors and survivor of them and the executors or administrators of such survivor," the power, though exercisable by the survivors and survivor, would not on the death of the last survivor pass to his personal representatives.

Heir-at-law on whom legal estate devolves by reason of death or dis-

Where by reason of the death or disclaimer of the trustees appointed by a will, the land devolves on the heir-at-law of the testator, subject to the trusts, which

trusts are of a nature involving the exercise of judgment and discretion, as, *e.g.*, a trust to sell or to lease, the heir cannot himself execute them (*u*), but new trustees must be appointed.

Disclaimer of trustees cannot exercise trusts involving discretion.

III. *The powers and duties of trustees for sale.*

Trustees for sale should use proper diligence to obtain the best price, and should take care to satisfy themselves as to the value of the property before they proceed to a sale (*x*). If by the terms of the trust they are not limited to any particular mode of sale, they may sell either by public auction or private contract, but as a general rule they should not sell by private contract at a sum below what the property has been previously valued at; and if they sell by auction, they should properly advertise the intended sale.

Duties of trustees for sale as to price and mode of sale.

Trustees may sell in one lot or in several lots and subject to conditions applicable to the state of the title, but they must not impose conditions calculated to depreciate the property without reasonable ground, even though authorized by the terms of the trust to sell "subject to such stipulations as to title as they may think fit" (*y*). It is, however, provided by the Trustee Act, 1888 (*z*), with respect to sales made after the 24th December, 1888, (1) that no sale by a trustee shall be impeached by any *cestui que trust* on the ground that any of the conditions may have been unnecessarily depreciatory, unless it shall appear that the consideration for the sale was thereby rendered inadequate: (2) that no sale shall after completion be impeached as against the purchaser on this ground unless it shall appear that he was acting in collusion with the trustee at the time of the contract for sale; and (3) that no purchaser shall be at liberty to object to the title upon this ground.

As to conditions of sale.

(*u*) Brown *v.* Higgs, 8 Ves. 561; Robson *v.* Flight, 34 L. J. Ch. 226; 4 De G. J. & S. 608.

(*x*) Conolly *v.* Parsons, 3 Ves. 625, note; Campbell *v.* Walker, 5 Ves. 678; Ord *v.* Noel, 5 Mad. 438. See also Harper *v.* Hayes, 2 De G. F. & J. 542; Selby *v.* Bowie, 4 Giff. 300.

(*y*) Dance *v.* Goldingham, L. R. 8 Ch. 902.

(*z*) 51 & 52 Vict. c. 59, s. 3.

Reserved biddings.

A trustee may fix a reserved bidding at a sale by auction, and buy in if that bidding is not reached (*a*); but in this, as in other matters relating to the trust, he must act providently. Unless authorized by the terms of his trust to defer a sale, his duty is to sell as soon as he conveniently can; if he does not, and the property falls in value, he runs the risk of being held answerable for the loss, particularly if he has in the meantime bought in at an auction at a sum higher than that ultimately realized, or otherwise refused a fair offer (*b*).

Powers conferred on trustees for sale by Conveyancing Act, 1881.

The above observations apply generally, whether the trust has been created before or since the 31st December, 1881; but as regards trusts created since that day, it is expressly provided by the Conveyancing Act, 1881 (*c*), that where a trust for sale or a power of sale is vested in trustees, they may sell either subject to prior charges or not, and either together or in lots, by public auction or by private contract, subject to any such conditions respecting title or evidence of title, or other matter, as they may think fit, with power to vary any contract for sale and to buy in or rescind any contract for sale, and resell without being answerable for loss.

Trust for sale must be exercised in accordance with conditions prescribed.

A trust for sale to take effect at a future time, or on certain conditions, can only be exercised at the time and in accordance with the conditions prescribed. Thus, where a testator devised an advowson to trustees upon trust to sell on the death of A. A. was the incumbent, so that on his death no sale could be made until the vacancy was filled up. It was held that the Court had no jurisdiction to authorize a sale in A.'s lifetime on the ground that it would be beneficial to the parties (*d*). Again, where a testator gave real and personal estate to trustees upon trust for sale, and declared that no sale should be made without the consent in writing of his sons and daughters, it was held that

(*a*) *Re* Peyton's Settlement, 30 Beav. 252.

(*b*) Taylor *v.* Tabrum, 6 Sim. 281; Fry *v.* Fry, 27 Beav. 144; Sug. V. & P. 50.

(*c*) Sect. 35.

(*d*) Johnstone *v.* Baber, 8 Beav. 333.

a contract entered into by the trustees after the death of one of the daughters could not be specifically enforced, although her representative concurred (*e*).

But a trust to sell within a given time may be exercised afterwards.

But a trust to sell within a given time will not preclude the trustees from selling after that time, if the nature of the trusts requires that there must certainly be a sale notwithstanding the lapse of time, either by the trustees or by the Court (*f*).

Sale of land without timber, or surface without mines.

Trustees for sale must sell the timber with the estate, although the tenant for life is unimpeachable for waste (*g*); and in the case of *Buckley* v. *Howell* (*h*), it was decided that the ordinary power of sale and exchange did not authorize a sale by the trustees of the surface, reserving the minerals. In consequence of this decision, which affected many existing titles, an Act was passed (*i*) which confirmed all sales, exchanges, partitions, and enfranchisements previously made, of the surface without the minerals, or of the minerals without the surface, and authorized similar dispositions in future, with the sanction of the Court (*k*). This Act was held to apply to mortgagees with a power of sale as well as to trustees strictly so called (*l*).

Surface and minerals may be sold, &c., separately under Settled Land Act.

The last-mentioned Act is practically superseded by sect. 17 of the Settled Land Act, 1882 (*m*), which enables the surface and the minerals to be sold, exchanged, or leased separately under the powers of that Act.

Unlimited powers of sale in a settlement valid.

A power of sale vested in trustees by a settlement, the proceeds being directed to be laid out in the purchase of lands to be settled to the like uses as the lands sold, or being otherwise liable to trusts corresponding with those uses, does not transgress the rule against perpetuities, although no limit is imposed by the terms of the instrument as to the period during which it may be exercised. Such a limit is in fact implied from the nature and object of the power,

Such powers cease when the estate vests in fee simple in possession.

(*e*) Sykes *v.* Sheard, 33 Beav. 114.
(*f*) *Re* Morley's Will, 6 Hare, 293.
(*g*) Cockerell *v.* Cholmeley, 1 R. & M. 418.
(*h*) 29 Beav. 546.
(*i*) 25 & 26 Vict. c. 108.
(*k*) Sects. 1, 2.
(*l*) *Re* Wilkinson's Estates, L. R. 13 Eq. 634.
(*m*) 45 & 46 Vict. c. 38.

which is intended to enable alienation during the continuance of the particular estates created by the settlement, and when those estates determine and the lands become vested in fee simple in possession, either under the ultimate limitation in the deed or by reason of a disentailing assurance, the power ceases also. Thus, if lands are settled on A. for life, with remainder to the sons of A. successively in tail, with remainder to B. in fee simple, and a power of sale unlimited in terms is vested in trustees, such power remains in force during A.'s life, and if he leaves male issue, until a tenant in tail attains twenty-one, and bars the entail, and upon that event happening, or on the death of A., if he has no male issue, the power ceases (*n*). And it seems that the existence of a jointure rent-charge, the fee simple being vested in possession subject to such jointure, will not keep alive the power (*o*).

Power remains although an undivided share has become vested in possession.

If property is settled, as to one undivided share, for one class of persons, and as to the other share for another class, the fact of one share having become absolutely vested in possession does not put an end to the power, which remains in force until the entirety has become so vested (*p*).

Doctrine does not apply where power is for purpose of division.

The doctrine that a power of sale unlimited in terms ceases so soon as the property becomes absolutely vested, does not (in the opinion of Jessel, M. R.) apply to a case where the power is made to take effect on the coming into existence of the absolute limitation, *e. g.*, where property is given to trustees in trust for a class of persons absolutely, with a power to sell "for the purpose of division." His Lordship considered that a power of this kind was from its nature exercisable within a reasonable time, and therefore valid (*q*).

(*n*) Mortlock *v.* Buller, 10 Ves. 315; Biddle *v.* Perkins, 4 Sim. 135; Waring *v.* Coventry, 1 M. & K. 249; Nelson *v.* Callow, 15 Sim. 353; Lantsbury *v.* Collier, 2 K. & J. 709.

(*o*) Wheate *v.* Hall, 17 Ves. 86. The decision of V.-C. Bacon in *Re* Cooke's Contract, 4 C. D. 454, seems *primâ facie* to conflict with the doctrine stated in the text; but his Honor must have considered in that case that the authority to sell was an absolute trust for conversion, and not a mere power. See note (*q*) below.

(*p*) Trower *v.* Knightley, 6 Mad. 134; Taite *v.* Swinstead, 26 Beav. 525; *Re* Brown's Settlement, L. R. 10 Eq. 349.

(*q*) Peters *v.* Lewes, &c. Rail.

Where a power of sale is conferred so as in terms to be exercisable only within the permitted period, such a power remains in force notwithstanding that the property has become absolutely vested, if such appears to be the settlor's intention and there has been no election by the *cestuis que trustent* to put an end to it (*r*).

Power limited in terms, may continue after property has become vested.

A power to sell in order to raise a sum of money implies, it has been said, a power to mortgage, which is a conditional sale (*s*); but this is only the case when the purpose of the trust will be answered by a mortgage; for if the intention appears that a sale out and out shall be made, a mortgage will not be a valid exercise of the power (*t*).

Power of sale, where it authorizes a mortgage.

A power of sale does not authorize a partition (*u*), and until lately it was considered doubtful whether a partition could be carried into effect under a power of exchange (*x*). But the doubt on this point may be considered as set at rest by a recent case (*y*), where Jessel, M. R., reviewed all the authorities, and arrived at the conclusion that a partition of an estate held in moieties could be made under such a power, and intimated his opinion, although it was not necessary to decide the point, that there was no difference in this respect between an estate held in moieties, and one held in a greater number of undivided shares (*z*).

A partition authorized by power of exchange, but not by a power of sale.

Land subject to a discretionary power of sale retains its character of real estate until sale (*a*).

Land remains real estate, until power is exercised.

Co., 18 C. D. 429. The view of the M. R., as stated above, and also the decision of Bacon, V.-C., in *Re* Cooke's Contract, 4 C. D. 454, may be supported by considering that where there is a trust to divide, with a power to sell for the purpose of division, the power is not a power in the proper sense of the term, *i.e.*, an authority to defeat or divest interests vested in default of its exercise, but is merely part of the machinery for carrying out the trust for division. It is in effect a trust to divide the property among the objects either by selling and distributing the proceeds, or by specific allotments or otherwise.

(*r*) *Re* Cotton's Trustees *v.* The London School Board, 19 C. D. 624.

(*s*) Mills *v.* Banks, 3 P. Wms. 9.

(*t*) 1 Sug. Pow. 538; Haldenby *v.* Spofforth, 1 Beav. 390; Stroughill *v.* Anstey, 1 De G. M. & G. 635; Devaynes *v.* Robinson, 24 Beav. 86.

(*u*) M'Queen *v.* Farquhar, 11 Ves. 467.

(*x*) Dart, V. & P. 78; Sug. Powers, pp. 856, 857, 859.

(*y*) Frith *v.* Osborne, L. R. 3 C. D. 618.

(*z*) See also Abel *v.* Heathcote, 4 B. C. C. 278; Doe *v.* Spencer, 2 Exch. 752.

(*a*) Walter *v.* Maunde, 19 Ves. 424.

Trust property may be sold conjointly with other property.

Trust property may be sold conjointly with property belonging to other persons or held on different trusts, if by reason of the situation of the two properties, or for any other reason, a joint sale is likely to produce a better price than separate sales (*b*). On this principle a joint sale by trustees of the reversion expectant on a lease, and by the owner of the lease, was held good (*c*). In the case of a joint sale, the trustees have authority to agree with the other vendor as to the apportionment of the purchase-money, which must be done before the purchase is completed, and the purchaser dividing his money according to such apportionment is safe unless he has notice that the apportionment is an improper one (*d*). If, however, the two properties are so situate that, *primâ facie*, nothing will be gained by a joint sale, the *onus* lies on the trustee to show that it is a prudent and right thing (*e*).

Contract if a breach of trust not enforced.

If a trustee enters into a contract of sale which is under the circumstances a breach of trust as between himself and his *cestui que trust*, the Court will refuse to enforce its specific performance either at the suit of the vendor or of the purchaser, and will, even at the suit of the *cestui que trust*, restrain the vendor from carrying it into effect, leaving the purchaser to his remedy in damages, if any (*f*). If under such a contract the property has been actually conveyed to the purchaser, the question whether it will be set aside will depend on whether he had notice of the breach of trust.

Under old law trustees could give good receipts in certain cases only.

According to the old law, a purchaser from a trustee was liable to see that his purchase-money was properly applied, unless the instrument expressly declared that the trustee's receipt should be a good discharge, or unless such an intention was to be inferred from the nature of the trust. But by the Conveyancing Act,

(*b*) Cavendish *v.* Cavendish, 10 Ch. 319; *Re* Cooper, &c., 4 C. D. 803. As to the including of two trust properties in one mining lease, see Tolson *v.* Sheard, 5 C. D. 19.

(*c*) Morris *v.* Debenham, 2 C. D. 540.

(*d*) *Re* Cooper, &c., *ubi supra*.

(*e*) *Re* Cooper, &c., *ubi supra*.

(*f*) Mortlock *v.* Buller, 10 Ves. 392; Ord *v.* Noel, 5 Madd. 438; Turner *v.* Harvey, Jac. 169; Rede *v.* Oakes, 4 De G. J. & S. 513; Dance *v.* Goldingham, L. R. 8 Ch. App. 913.

1881, sect. 36, it is provided that "the receipt in writing of any trustees or trustee for any money, securities, or other personal property payable, transferable, or deliverable to them or him under any trust or power, shall be a sufficient discharge for the same, and shall effectually exonerate the person paying, transferring, or delivering the same, from seeing to the application or being answerable for any loss or misapplication thereof," and this enactment is made applicable to trusts created either before or after the commencement of the Act (*g*).

How money to be paid to trustees.

Trustees are not, as a general rule, justified in delegating to an agent, or even to one of themselves, the power to receive money, and until the recent Act a purchaser, or other person liable to pay money to trustees, was entitled to insist on all the trustees being personally present to receive and take charge of it, or on their giving a written authority for payment of it to their joint account at a bank (*h*). But the law is now modified to this extent that—(1) a trustee (which term includes an executor) may appoint a solicitor to be his agent to receive and give a discharge for any money, &c. receivable by such trustee under the trust by permitting him to have the custody of and to produce a deed containing any such receipt as is referred to in sect. 56 of the Conveyancing Act, 1881 (*i*); and (2) a trustee may appoint a solicitor or banker to receive and give a discharge for money payable under a policy of assurance by permitting him to have the custody of and to produce such policy with a receipt signed by the trustee; but the trustee must not, in

Cases in which trustee may appoint a solicitor or banker as his agent to receive money.

(*g*) See also 22 & 23 Vict. c. 35, s. 23.

(*h*) *Re* Bellamy, 24 C. D. 387; *Re* Flower, 27 C. D. 592. These cases merely decide that a purchaser from trustees may, for his own protection, and in order to be perfectly safe, insist on paying as above, where there is no reason for adopting any other mode of payment. But it has never been decided that a person paying money to an agent according to the written direction of the trustees, will have to pay it over again if it is misappropriated by the agent, and such authority as there is appears to be against such liability. Webb *v.* Ledsam, 1 K. & J. 385; Hope *v.* Liddell, 21 Beav. 183.

(*i*) Under this section the production by a solicitor of a deed, with a receipt for money signed by the person entitled to receive it, is a sufficient authority for the payment of it to the solicitor.

either of the above cases, permit the money to remain in the hands of the solicitor or banker longer than is reasonably necessary to enable him to pay the same to the trustee (*k*).

Executor's receipt for proceeds of chattels real.

Chattels real vest in the executor for the payment of the testator's debts, so that, although they may be specifically bequeathed, the executor's receipt is a sufficient discharge for the proceeds of the sale thereof (*l*).

Trusts or powers of sale vested in trustees of settled land are subordinate to powers of tenant for life under Settled Land Act.

It will be borne in mind that whenever land is settled within the meaning of the Settled Land Act, 1882 (other than sect. 63 of that Act), so that there is under the deed or will creating the settlement a tenant for life or any person placed by the Act in the position of a tenant for life, by whom the statutory powers of sale, exchange, leasing, &c., can be exercised, then all powers for the same purpose given by the settlement to trustees are subordinate to the statutory powers and cannot be exercised without the consent of the person, or one of the persons, in whom those powers are for the time being vested. But if land is vested in trustees upon trust to sell so as to constitute a settlement under sect. 63 of that Act, the trustees may sell or exercise any trusts or powers vested in them by the settlement, without any consent not required by the terms of the instrument (*m*).

IV. *Purchases by a trustee from himself or from his* cestui que trust.

Trustee for sale cannot buy from himself.

A trustee for sale cannot purchase the trust property from himself, nor, where there are several trustees, can one buy from the others. The sale is not, however, void *ab initio*, but is liable to be set aside, as a matter of course, by the *cestui que trust*, provided that he applies to the Court for that purpose within a reasonable time; and it is not necessary to show that the trustee has taken any advantage. If, prior to the

(*k*) Trustee Act, 1888, s. 2.
(*l*) Dart, V. & P. 673.
(*m*) Sect. 56; Act of 1884, s. 6.

setting aside of the sale, the trustee has sold at an increased price, the *cestui que trust* may claim the advantage (*n*).

Court will sometimes authorize purchase by trustee.

The Court will, however, sometimes authorize a purchase by a trustee of the trust property on being satisfied that such purchase is for the benefit of the *cestui que trust* (*o*).

Purchases by trustee from *cestui que trust*, under what circumstances valid.

With regard to purchases by a trustee from his *cestui que trust*, the rule has been thus stated by Lord Eldon: "The rule I take to be this, not that a trustee cannot buy from his *cestui que trust*, but that he shall not buy from himself. If a trustee will so deal with his *cestui que trust* that the amount of the transaction shakes off the obligation that attaches upon him as trustee, then he may buy. The rule is, that a trustee who is entrusted to sell and manage for others undertakes in the same moment in which he becomes a trustee not to manage for the benefit and advantage of himself. It does not preclude a new contract with those who have entrusted him. The *cestuis que trust* may, by a new contract dismiss him from the character of trustee; but even that transaction, by which they dismiss him, must, according to the rules of this Court, be watched with the most guarded jealousy; and for this reason, that the law supposes him to have acquired all the knowledge a trustee may acquire, which may be very useful to him, but the communication of which to the *cestui que trust* the Court can never be sure he has made when entering into the new contract by which he is discharged. Whether the trustee has made advantage or not, if the connection does not satisfactorily appear to have been dissolved, it is in the choice of the *cestuis que trust* whether they will take back the property" (*p*). In another case it was observed by the same judge, "It is not, in my opinion, necessary to show that the trustee has made an advantage. The principle is, that as the trustee is bound by his duty to acquire all the

(*n*) Fox *v.* Mackreth, 2 B. C. C. 400; Killick *v.* Flexney, 4 *ib.* 161; Campbell *v.* Walker, 5 Ves. 609.

(*o*) Farmer *v.* Dean, 32 Beav. 327.

(*p*) *Ex parte* Lacey, 6 Ves. 625.

knowledge possible to enable him to sell to the utmost advantage for the *cestui que trust*, the question what knowledge he has obtained, and whether he has fairly given the benefit of that knowledge to the *cestui que trust* which he always acquires at the expense of the *cestui que trust*, no Court can discuss with competent sufficiency or safety to the parties" (*q*).

Where *cestui que trust* takes upon himself management of trust property.

In a case where the *cestui que trust* had full information, and took upon himself the management of the property and of the sale, making or directing the surveys and fixing the value, a purchase by the trustee from such *cestui que trust* was supported; the Court observing, "As to the objection to a purchase by the trustee, the answer is that a trustee may purchase from the *cestui que trust* provided there is a clear and distinct contract, ascertained to be such after a jealous and scrupulous examination of all the circumstances, that the *cestui que trust* intended the trustee should buy, and there is no fraud, no concealment, no advantage taken by the trustee of information acquired by him in the character of trustee" (*r*).

Sale by trustees to tenant for life valid.

A sale by trustees under a power of sale and exchange to the tenant for life, whose consent is necessary to the exercise of the power, is a valid transaction (*s*), the reason being, that the power of giving or withholding his consent is given to the tenant for life for his own benefit, and he is not in a fiduciary position with respect to it (*t*). And a tenant for life may purchase under the Settled Land Acts, and in that case the trustees of the settlement are made the vendors in the place of the tenant for life (*u*). And the rule that a purchase by a trustee from his *cestui que trust* is liable to be impeached does not apply to a bare trustee who has no duties to perform, as, for example, to a trustee to preserve contingent remainders, or to a case where land is given to A. in fee in trust for B. (an adult) in fee.

Purchase by bare trustee or disclaiming trustee good.

(*q*) *Ex parte* James, 8 Ves. 348.

(*r*) Coles *v.* Trecothick, 9 Ves. 246. See also Downes *v.* Grazebrook, 3 Mer. 208; Luff *v.* Lord, 34 Beav. 220; Dover *v.* Buck, 11 Jur. 580.

(*s*) Howard *v.* Ducane, T. & R. 81.

(*t*) Dicconson *v.* Talbot, L. R. 6 C. A. 32.

(*u*) 53 & 54 Vict. c. 69, s. 12.

In either of these cases the trustee may purchase from the beneficiaries of the property (*x*). And a disclaiming trustee may purchase from the acting trustee (*y*).

Purchase by trustee at auction not good as between his heir and next of kin.

In a case where a trustee for sale bought the trust property at an auction and died intestate, it was held, as between the heir and next of kin of such trustee, that the heir was not entitled to have the contract completed for his benefit (*z*).

V. *The powers and duties of trustees as regards the investment of trust moneys, and the management of the trust property.*

Investments authorized by Act of 1889.

The Trust Investment Act, 1889 (*a*), provides as follows:—

Sect. 3. It shall be lawful for a trustee (*b*), unless expressly forbidden by the instrument (if any) creating the trust, to invest any trust funds in his hands in manner following, that is to say:—

(a) In any of the parliamentary stocks or public funds or government securities of the United Kingdom:

(b) On real or heritable securities in Great Britain or Ireland:

(c) In the stock of the Bank of England or the Bank of Ireland:

(d) In India Three-and-a half per Cent. Stock and India Three per Cent. Stock, or in any other capital stock which may at any time hereafter be issued by the Secretary of State in Council of India, under the authority of Act of Parliament, and charged on the revenues of India:

(e) In any securities the interest of which is or shall be guaranteed by Parliament:

(*x*) Parkes *v.* White, 11 Ves. 209; Pooley *v.* Quilter, 4 Drew. 184.

(*y*) Stacey *v.* Elph, 1 M. & K. 195.

(*z*) Ingle *v.* Richards, 28 Beav. 361.

(*a*) 52 & 53 Vict. c. 32.

(*b*) "Trustee" includes an executor or administrator and a trustee whose trust arises by construction or implication of law as well as an express trustee. Sect. 9.

(f) In consolidated stock created by the Metropolitan Board of Works, or which may at any time hereafter be created by the London County Council, or in debenture stock created by the receiver for the Metropolitan Police District:

(g) In the debenture or rentcharge or guaranteed or preference stock (*c*) of any railway company in Great Britain or Ireland incorporated by special Act of Parliament, and having during each of the ten years last past before the date of investment paid a dividend at the rate of not less than three per centum per annum on its ordinary stock:

(h) In the stock of any railway or canal company in Great Britain or Ireland whose undertaking is leased in perpetuity or for a term of not less than two hundred years at a fixed rental to any such railway company as is mentioned in sub-section (g) either alone or jointly with any other railway company:

(i) In the debenture stock of any railway company in India the interest on which is paid or guaranteed by the Secretary of State in Council of India:

(j) In the "B" Annuities of the Eastern Bengal, the East Indian and the Scinde Punjaub and Delhi Railways, and any like annuities which may at any time hereafter be created on the purchase of any other railway by the Secretary of State in Council of India, and charged on the revenues of India, and which may be authorized by Act of Parliament to be accepted by trustees in lieu of any stock held by them in the purchased railway:

(k) In the stock of any railway company in India upon which a fixed or minimum dividend in sterling is paid or guaranteed by the Secretary of State in Council of India:

(l) In the debenture or guaranteed or preference stock of any company in Great Britain or Ireland, established for the supply of water for profit, and incorporated by special Act of Parliament or by royal charter, and

(*c*) "Stock" includes fully paid-up shares. Sect. 9.

having during each of the ten years last past before the date of investment paid a dividend of not less than five pounds per centum on its ordinary stock:

(m) In nominal or inscribed stock issued, or to be issued, by the corporation of any municipal borough, having according to the returns of the last census prior to the date of investment a population exceeding fifty thousand, or by any county council, under the authority of any Act of Parliament or provisional order:

(n) In nominal or inscribed stock issued or to be issued by any commissioners incorporated by Act of Parliament for the purpose of supplying water, and having a compulsory power of levying rates over an area having, according to the returns of the last census prior to the date of investment, a population exceeding fifty thousand, provided that during each of the ten years last past before the date of investment the rates levied by such commissioners shall not have exceeded eighty per centum of the amount authorized by law to be levied:

(o) In any of the stocks, funds, or securities, for the time being authorized for the investment of cash under the control or subject to the order of the Court:

and also from time to time to vary any such investment.

Purchase at a premium of redeemable stocks.

Sect. 4.—(1.) It shall be lawful for a trustee under the powers of this Act to invest in any of the stocks funds shares or securities mentioned or referred to in section three of this Act, notwithstanding that the same may be redeemable, and that the price exceeds the redemption value.

(2.) Provided that it shall not be lawful for a trustee under the powers of this Act to purchase at a price exceeding its redemption value, any stock mentioned or referred to in sub-sections (g), (i), (k), (l), and (m), which is liable to be redeemed within fifteen years of the date of purchase at par or at some other fixed rate, or to purchase any such stock as is mentioned or referred to in the sub-sections aforesaid, which is liable to be redeemed at par or at some other fixed rate, at a price exceeding fifteen per centum above par or such other fixed rate.

(3.) It shall be lawful for a trustee to retain until redemption

any redeemable stock fund or security which may have been purchased in accordance with the powers of this Act.

Discretion of trustees.

Sect. 5. Every power conferred by this Act shall be exercised according to the discretion of the trustee, but subject to any consent required by the instrument (if any) creating the trust with respect to the investment of the trust funds.

Application of Act.

Sect. 6. This Act shall apply as well to trusts created before as to trusts created after the passing of this Act, and the powers hereby conferred shall be in addition to the powers conferred by the instrument, if any, creating the trust.

The statutory power authorizes a change of existing investments acquired before the Act, notwithstanding that the instrument contains no power to vary investments (*e*).

The Trust Investment Act does not apply to trustees of benefit building societies or friendly societies (*f*).

The Trustee Act, 1888 (*g*), provides as follows:—

Loans by trustees.

Sect. 4.—(1.) No trustee lending money upon the security of any property shall be chargeable with breach of trust by reason only of the proportion borne by the amount of the loan to the value of such property at the time when the loan was made, provided that it shall appear to the Court that in making such loan the trustee was acting upon a report as to the value of the property made by a person whom the trustee reasonably believed to be an able practical surveyor or valuer, instructed and employed independently of any owner of the property, whether such surveyor or valuer carried on business in the locality where the property is situate or elsewhere, and that the amount of the loan does not exceed two equal third parts of the value of the property as stated in such report, and that the loan was made under the advice of such surveyor or valuer, expressed in such report. And this section shall apply to a loan upon any property of any tenure, whether agricultural or house or other property, on which the trustee can lawfully lend.

(2.) No trustee lending money upon the security of any lease-

(*e*) *In re* Dick, (1891) 1 Ch. 423.
(*f*) *In re* National, &c. Benefit Building Society, 43 C. D. 431.
(*g*) 51 & 52 Vict. c. 59.

hold property shall be chargeable with breach of trust only upon the ground that in making such loan he dispensed, either wholly or partially, with the production or investigation of the lessor's title.

(3.) No trustee shall be chargeable with breach of trust only upon the ground that, in effecting the purchase of any property, or in lending money upon the security of any property, he shall have accepted a shorter title than the title which a purchaser is, in the absence of a special contract, entitled to require, if in the opinion of the Court the title accepted be such as a person acting with prudence and caution would have accepted.

(4.) This section shall apply to transfers of existing securities as well as to new securities, and investments made as well before as after the passing of this Act, except where some action or other proceeding shall be pending with reference thereto at the passing of this Act.

Liability for loss by reason of improper investments.

Sect. 5.—(1.) Where a trustee shall have improperly advanced trust money on a mortgage security which would, at the time of the investment, have been a proper investment in all respects for a less sum than was actually advanced thereon, the security shall be deemed an authorized investment for such less sum, and the trustee shall only be liable to make good the sum advanced in excess thereof with interest.

(2.) This section shall apply to investments made as well before as after the passing of this Act, except where some action or other proceeding shall be pending with reference thereto at the passing of this Act.

Investments on mortgage of long terms.

Sect. 9. A power to invest trust money in real securities shall authorize and shall be deemed to have always authorized an investment upon mortgage of property held for an unexpired term of not less than two hundred years and not subject to any reservation of rent greater than one shilling a year, or to any right of redemption, or to any condition for re-entry except for non-payment of rent.

Trustee may not invest on a contributory mortgage.

In the absence of an express power, it is a breach of trust to invest on a contributory mortgage (*h*).

(*h*) Webb *v.* Jonas, 39 C. D. 660.

Lending on personal security.

Trustees cannot lend on personal security under a power to invest the trust funds at their discretion (*e*), or under a direction to lay out "on such good security as the trustees can procure and may think safe" (*f*).

A power in a will to invest in the securities of "any railway or other public company carrying on business in any part of the United Kingdom" has been held to include the securities of a company incorporated under the Companies Acts (*g*).

Extent of liability of trustees in case of loss of trust fund.

If a trustee improperly retains money uninvested, or for want of due care allows it to be lost, he is chargeable with the sum so retained or lost, with interest thereon at four per cent.; and if he has improperly lent or used the trust money in trade, the *cestuis que trust* have the option to charge him either with the profits actually made or with interest at five per cent., that being the ordinary rate of interest paid on capital in trade (*h*).

Where executors neglect to convert, excess of income of unconverted property beyond 3 per cent. is capital.

Where personal property is bequeathed upon trust for A. for life, with remainders over, and the trustee or executor, instead of converting it where he ought so to do, permits a portion to remain outstanding on an unauthorized investment, producing a large annual income which the tenant for life receives, the trustee will be compelled to account to the remainderman, not only for the principal money, but also for the excess of income paid to the tenant for life beyond the income which would have been received by him if there had been a conversion and investment in consols at the end of a year from the testator's death; in other words, the excess of income will be treated as capital (*i*).

Terms, if trustees make unauthorized investment.

But it has been held that this principle is not to be extended to the case of a trustee *making* an unauthorized investment by which the tenant for life receives a larger income. Thus, where trustees without authority lent trust moneys at interest at five per cent., it

(*e*) Pocock *v.* Reddington, 5 Ves. 794.
(*f*) Wilkes *v.* Steward, Coop. 6.
(*g*) *In re* Sharp, 45 C. D. 287.
(*h*) Robinson *v.* Robinson, 1 D. M. & G. 255, 257.
(*i*) Dimes *v.* Scott, 4 Russ. 195; Brown *v.* Gellatly, L. R. 2 Ch. 751. See also Howe *v.* Lord Dartmouth, 7 Ves. 137; Mills *v.* Mills, 7 Sim. 501.

was held that the tenant for life was entitled to the whole interest, and that the remainderman had no right to insist that any part of such interest formed capital. The Master of the Rolls observed, that when trustees or executors commit a breach of trust by lending the money on some unauthorized investment, they have discharged their liability in favour of the *cestuis que trust* in remainder, when they have made good the capital and any increase which that capital may have received (*k*).

Difference between trustees *authorized* or *required* to invest with consent.

If trustees are *authorized* to invest or change the investment with the *consent* of the tenant for life, neither party can be compelled to acquiesce in the desire of the other, but the voluntary concurrence of both parties is requisite to a valid exercise of the power (*l*). But in a case where the trustees were authorized *and required* to change the investments at the request of the tenant for life, the Court compelled the trustees to comply with the request of the tenant for life, that the existing securities should be changed (*m*).

Trustee may insure buildings,

By the Trustee Act, 1888, a trustee is authorized to insure against loss or damage by fire any building or other insurable property to any amount (including the amount of any insurance already on foot) not exceeding three equal fourth parts of the full value of such building or property, and to pay the premiums for such insurance out of the income thereof or out of the income of any other property subject to the same trusts, without obtaining the consent of any person who may be entitled wholly or partly to such income. But this power does not apply to any building or property which a trustee is bound forthwith to convey absolutely to any *cestui que trust* upon being requested so to do (*n*). And by the same Act a trustee is authorized to renew leases for years or for lives (*o*).

and renew leases.

(*k*) Stroud *v.* Gwyer, 28 Beav. 130, 141. But see Baynard *v.* Woolley, 20 Beav. 583.

(*l*) Lee *v.* Young, 2 Y. & C. 532.

(*m*) Beauclerk *v.* Ashburnham, 8 Beav. 322. And see, accordingly, Cadogan *v.* Essex, 2 Drew. 227.

(*n*) Sect. 7.

(*o*) Sect. 10.

Extent of trustee's liability for fraud of agent,

A trustee is bound to conduct the business of the trust in the same manner as an ordinary prudent man of business, regardful of the future pecuniary interests of those having claims upon him, would conduct his own, and beyond this he is not liable. He may employ solicitors, brokers, and other agents to do that which in the ordinary course of business other people would employ such persons to do. In accordance with this principle it has been held that a trustee or executor is not liable for loss arising from the failure of bankers with whom money has been deposited pending distribution or a permanent investment, unless such deposit has been made or allowed to remain without sufficient reason (*p*), or for the fraud of a broker who embezzled money given to him for investment (*q*); and an executor placing goods in the hands of a tradesman to be disposed of in the ordinary way of business, is not liable for loss arising from the tradesman becoming bankrupt (*r*). In one case a trustee was held liable for a loss occasioned by the fraud of his solicitor, to whom he had given money for investment (*s*), on the ground that it is not in the ordinary course of business to give money to a solicitor for investment (*t*). On the other hand, and in accordance with the above principle, it is apprehended that a trustee is not liable for accepting a title which his solicitor has advised to be good, but which turns out defective.

or of tradesman.

Trustee liable for fraud or neglect of solicitor, in what cases.

Whether a trustee may act on a surveyor's report as to value.

In some recent cases (*u*) a trustee was held liable for lending money on a mortgage security which proved insufficient in value, where he acted on the advice of a surveyor, on the ground that, under the circumstances, he ought to have exercised an independent judgment. But it is apprehended that a trustee may in future safely act on a surveyor's report if made in accordance with sect. 4 of the Trustee Act, 1888.

(*p*) Johnson *v.* Newton, 11 Hare, 160.
(*q*) Speight *v.* Gaunt, 22 C. D. 727.
(*r*) Job *v.* Job, 6 C. D. 562.
(*s*) Bostock *v.* Floyer, L. R. 1 Eq. 26; Sutton *v.* Wilders, L. R. 12 Eq. 373.
(*t*) Speight *v.* Gaunt, *ubi supra*.
(*u*) Fry *v.* Tapson, 28 C. D. 268; *Re* Whiteley, 33 C. D. 347; *Re* Olive, 34 C. D. 70.

When mortgaged property on which trust money has been invested falls in value so as to be an insufficient security, it is not the absolute duty of the trustees at once to call in the money, but they have a discretion which they must exercise as practical men with a due regard to all the circumstances of the case, such as the position and solvency of the mortgagor. The prudent course in such a case is to apply to the Court for direction by an originating summons (*v*).

Duty of trustees, if mortgaged property has fallen in value.

If a trustee lends on an authorized security a larger sum than is justifiable, the security is part of the trust property, and the trustee is liable only for the loss which may arise on its realization. If new trustees are appointed, it is their duty to realize, and they are not bound to give the trustee who committed the breach of trust the option of replacing the fund and taking to the security (*x*).

Liability of trustee who lends too large an amount on an authorized security.

If at the time of the realization of a security there are arrears of interest, and the money actually recovered is insufficient to pay even the principal money in full, the sum recovered will be apportioned between the tenant for life and remaindermen on the basis of the following calculation: Add together the money realized by the trustees and all the interest received by the tenant for life, and divide the total between corpus and income in the proportion which the original principal sum bears to the total amount which the tenant for life would have received if the interest had been regularly paid. The sum thus found to belong to corpus is the sum which the trustees ought to retain as corpus out of the money recovered by them, and the balance will belong to the tenant for life (*y*).

On what principle a loss will be apportioned between tenant for life and remainderman.

If a trustee buys real estate with trust money, having no power to do so, the *cestuis que trust* may elect to adopt the purchase (*z*). But if they do not all concur in such election, or any of them are under

Power of trustee to sell real estate improperly purchased.

(*v*) *In re* Medland, 41 C. D. 476.
(*x*) *In re* Salmon, 42 C. D. 351.
(*y*) See *In re* Foster, 45 C. D. 258.
(*z*) Wiles *v.* Gresham, 2 Drew. 629.

disability, it is the duty of the trustee to resell. If the money produced by the resale is more than was given for the property, the whole belongs to the trust; if less, the trustees must make up the deficiency. The purchaser on a resale ought to satisfy himself that the *cestuis que trust* are not in a position to elect to adopt the purchase, or that at least one of them refuses to do so, and in that case he will have a good title, whether there is a gain or loss to the trust fund (*a*).

Passive trustee, whether entitled to indemnity from active trustee who has committed breach of trust.

Where there are two trustees, and the management of the trust is left in the hands of one, and the acting trustee commits a breach of trust, the passive trustee is not entitled to an indemnity from the active trustee unless there are some special circumstances, as where the active trustee is the solicitor for the trust or has derived a personal benefit from the breach (*b*).

Court may impound interest of beneficiary to indemnify trustee.

If a trustee commits a breach of trust at the instigation or request or with the consent in writing of a beneficiary, the Court may, if it thinks fit, and notwithstanding that the beneficiary may be a married woman restrained from anticipating, make an order impounding all or any part of the beneficiary's interest by way of indemnity to the trustee (*c*).

Liability of trustee for money received by co-trustee.

Where there are several trustees, they must all join in a receipt for trust money payable to them, whereas, in the case of executors, one can give a receipt. Where all the trustees join, they will all *primâ facie* be considered as having received the money; but one of them may show that the money was in fact received by the others, and that he joined only for conformity. In that case, he is not answerable for a misapplication by the others. But a trustee, though not liable for merely permitting his co-trustees to receive the money, is not justified in allowing it to be retained by the latter for longer than the circumstances require (*d*).

(*a*) *Re* Patten and Edmonton Guardians, 52 L. J. Ch. 787.

(*b*) Bahin *v.* Hughes, 31 C. D. 390.

(*c*) Trustee Act, 1888, s. 6. It has been held that the words "in writing" apply only to a consent, and not to a request. Griffith *v.* Hughes, (1892) 3 Ch. 105.

(*d*) Brice *v.* Stokes, 11 Ves. 319.

VI. *Disclaimer.*

Disclaimer.

If a person appointed a trustee by deed or will is desirous of disclaiming the trust, and has done no act which would amount to an acceptance of it, he should execute a deed of disclaimer in proper form, bearing in mind that any form is incorrect which affects to convey and release property the trusts whereof he disclaims (*e*).

What is acceptance of a trust.

What will amount to the acceptance of a trust must depend upon the acts or conduct of the trustee. For instance, the signature of the deed by which the trust is created, or any interference in the management of the estate under the trusts of the deed, would be regarded as an acceptance (*f*).

Probate acceptance of trust.

There can be no disclaimer of a trust which has once been accepted; and where personalty is bequeathed to executors as trustees, the probate of the will amounts to an acceptance of the trust (*g*). But, on the other hand, a renunciation of the executorship is not of itself a disclaimer of the trusts.

Revocation of one office does not revoke other.

When a person is appointed trustee and executor, and by a codicil the testator revokes the appointment of that person as executor, this does not amount to a revocation of the trusteeship (*h*).

Disclaimer may be by conduct as well as by deed.

A man's assent to a devise to him is presumed, unless he disclaims, but he may disclaim by conduct as well as by deed. Conduct which amounts to a disclaimer of the office of trustee is a disclaimer also of the legal estate (*i*).

Consequences of disclaimer.

The effect of a disclaimer is to put all parties in the same position as if the disclaiming party had not been named in the trust instrument. If a sole trustee or all the trustees under a will disclaim, the legal estate passes to the testator's heir; and if one of several trustees disclaims, the others take the legal estate, and

(*e*) Nicloson *v.* Wordsworth, 2 Swan. 365; Urch *v.* Walker, 3 M. & Cr. 710.

(*f*) Hill on Trustees, 194.

(*g*) Mucklow *v.* Fuller, Jac. 198.

(*h*) Graham *v.* Graham, 22 L. J. Ch. 937.

(*i*) *In re* Birchall, 40 C. D. 436.

also the powers and authorities requisite for the administration of the trust. The disclaimer must be absolute, and is irrevocable (*k*).

A power may be disclaimed.

By the Conveyancing Act, 1882 (*l*), it is provided that a person to whom any power, whether coupled with an interest or not, is given, may by deed disclaim the power, and on such disclaimer the power may be exercised by the other or others, or the survivors or survivor of the others, of the persons to whom it is given.

VII. *The appointment of new trustees, and the powers conferred by statute for this purpose.*

The Conveyancing Acts, 1881, 1882, and 1892 (*m*), contain the following provisions with respect to the appointment of new trustees in case of vacancies by death or otherwise.

Conveyancing Act, 1881, sect. 31.

Power to appoint new trustees.

Act of 1881, sect. 31.—(1.) Where a trustee, either original or substituted, and whether appointed by a Court or otherwise, is dead, or remains out of the United Kingdom for more than twelve months, or desires to be discharged from the trusts or powers reposed in or conferred on him, or refuses or is unfit to act therein, or is incapable of acting therein, then the person or persons nominated for this purpose by the instrument, if any, creating the trust, or if there is no such person, or no such person able and willing to act, then the surviving or continuing trustees or trustee for the time being, or the personal representatives of the last surviving or continuing trustee (*n*), may, by writing, appoint another person or other persons to be a trustee or trustees in the place of the trustee dead, remaining out of the United Kingdom, desiring to be discharged, refusing or being unfit, or being incapable as aforesaid.

(*k*) Hill on Trustees, 205.
(*l*) 45 & 46 Vict. c. 39, s. 6.
(*m*) 44 & 45 Vict. c. 41; 45 & 46 Vict. c. 39; 55 & 56 Vict. c. 13.
(*n*) This includes the case of an executor of a sole trustee. *In re* Shafto's Trusts, 29 C. D. 247.

(2.) On an appointment of a new trustee, the number of trustees may be increased (*o*). Number of trustees may be increased.

(3.) On an appointment of a new trustee, it shall not be obligatory to appoint more than one new trustee, where only one trustee was originally appointed, or to fill up the original number of trustees, where more than two trustees were originally appointed; but, except where only one trustee was originally appointed, a trustee shall not be discharged under this section from his trust unless there will be at least two trustees to perform the trust. Number need not be kept up provided there are at least two.

(4.) On an appointment of a new trustee any assurance or thing requisite for vesting the trust property, or any part thereof, jointly in the persons who are the trustees, shall be executed or done. Trust property to be vested in new trustees.

(5.) Every new trustee so appointed, as well before as after all the trust property becomes by law, or by assurance, or otherwise, vested in him, shall have the same powers, authorities, and discretions, and may in all respects act, as if he had been originally appointed a trustee by the instrument, if any, creating the trust. New trustee to succeed to all powers, &c.

(6.) The provisions of this section relative to a trustee who is dead include the case of a person nominated trustee in a will but dying before the testator; and those relative to a continuing trustee include a refusing or retiring trustee, if willing to act in the execution of the provisions of this section. Section applies to trustee dying before testator,

(7.) This section applies only if and as far as a contrary intention is not expressed in the instrument, if any, creating the trust, and shall have effect subject to the terms of that instrument and to any provisions therein contained.

(8.) This section applies to trusts created either before or after the commencement of this Act. and to trusts created either before or after Act.

Sect. 32.—(1.) Where there are more than two trustees, if one of them by deed declares that he is desirous of being discharged from the trust, and if his co-trustees and such other person, if any, as is empowered to appoint trustees, by deed consent to the discharge of the trustee, and to Trustee may retire with consent of co-trustees and donee of power.

(*o*) This does not authorize the appointment of an additional trustee where there is no vacancy. *In re* Gregson's Trusts, 34 C. D. 209.

the vesting in the co-trustees alone of the trust property, then the trustee desirous of being discharged shall be deemed to have retired from the trust, and shall, by the deed, be discharged therefrom under this Act, without any new trustee being appointed in his place.

(2.) Any assurance or thing requisite for vesting the trust property in the continuing trustees alone shall be executed or done.

(3.) This section applies only if and as far as a contrary intention is not expressed in the instrument, if any, creating the trust, and shall have effect subject to the terms of that instrument and to any provisions therein contained.

(4.) This section applies to trusts created either before or after the commencement of this Act.

Powers of new trustee appointed by Court.

Sect. 33.—(1.) Every trustee appointed by the Court of Chancery, or by the Chancery Division of the Court, or by any other Court of competent jurisdiction, shall, as well before as after the trust property becomes by law, or by assurance, or otherwise, vested in him, have the same powers, authorities, and discretions, and may in all respects act, as if he had been originally appointed a trustee by the instrument, if any, creating the trust.

(2.) This section applies to appointments made either before or after the commencement of this Act.

Vesting of trust property in new or continuing trustees.

Sect. 34.—(1.) When a deed by which a new trustee is appointed to perform any trust contains a declaration by the appointor to the effect that any estate or interest in any land subject to the trust, or in any chattel so subject, or the right to recover and receive any debt or other thing in action so subject, shall vest in the persons who by virtue of the deed become and are the trustees for performing the trust, that declaration shall, without any conveyance or assignment, operate to vest in those persons, as joint tenants, and for the purposes of the trust, that estate, interest, or right.

(2.) Where a deed by which a retiring trustee is discharged under this Act contains such a declaration as is in this section mentioned by the retiring and continuing trustees and by the other person, if any, empowered to appoint trustees, that declaration shall, without any conveyance

or assignment, operate to vest in the continuing trustees alone, as joint tenants, and for the purposes of the trust, the estate, interest, or right to which the declaration relates.

(3.) This section does not extend to any legal estate or interest in copyhold or customary land, or to land conveyed by way of mortgage for securing money subject to the trust, or to any such share, stock, annuity, or property as is only transferable in books kept by a company or other body, or in manner prescribed by or under Act of Parliament.

(4.) For purposes of registration of the deed in any registry, the person or persons making the declaration shall be deemed the conveying party or parties, and the conveyance shall be deemed to be made by him or them under a power conferred by this Act.

(5.) This section applies only to deeds executed after the commencement of this Act.

Appointment of separate sets of trustees.

Act of 1882, sect. 5.—(1.) On an appointment of new trustees a separate set of trustees may be appointed for any part of the trust property held on trusts distinct from those relating to any other part or parts of the trust property; or if only one trustee was originally appointed, then one separate trustee may be so appointed for the first-mentioned part.

(2.) This section applies to trusts created either before or after the commencement of this Act.

Trustee may be appointed for separate parts of property though no new trustee be appointed of other parts.

Act of 1892, sect. 6. A separate set of trustees or a separate trustee may be appointed under the fifth section of the Conveyancing Act, 1882, of a part only of the trust property, notwithstanding that no new trustees or trustee are to be appointed of other parts of the trust property, and any existing trustee may be appointed or remain one of such separate set of trustees; and every appointment already made of a separate set of trustees shall be valid notwithstanding that there was no retiring trustee of other parts of the trust property, and that no new trustees were appointed of such other parts thereof.

Cases in which independently of Act, trustee, applying to Court to be discharged, will be allowed costs.

Independently of sect. 32 of the Act of 1881, a trustee may apply to the Court to be discharged from the trust, but he will have to pay the costs of the action, unless he can show that circumstances have arisen which alter the nature of his duties (*x*). And the executor of a deceased sole trustee may decline to act, and will be entitled to the costs of any proceedings for the appointment of a new trustee (*y*).

Where one of two trustees disclaims, the other may retire and appoint a single trustee.

Under the statutory powers, a retiring trustee, being one of two originally appointed, may appoint a single trustee in his own place, the other having previously disclaimed (*z*).

Meaning of "acting trustees."

In a case where the power to appoint new trustees was given to the "acting trustees for the time being," it was held that the co-heiresses of the last surviving trustee came within this description, the mere fact of their making the appointment being sufficient to constitute them "acting trustees" (*a*).

Beneficiary may be a new trustee.

A person beneficially interested, and even the tenant for life under the settlement, may be appointed a new trustee, unless the instrument shows an intention to the contrary (*b*). But the donee of the power cannot appoint himself (*c*).

Consent of assign of tenant for life to exercise by him of power to appoint new trustees not requisite.

If a tenant for life with a power to appoint new trustees sells or mortgages his life estate, the consent of the vendee or mortgagee to an exercise of the power is not necessary (*d*).

(*x*) Forshaw *v.* Higginson, 20 Beav. 485; Gardiner *v.* Downes, 22 Beav. 395.

(*y*) Legg *v.* Mackrell, 2 D. F. & J. 551.

(*z*) West of England, &c. Bank *v.* Murch, 23 C. D. 138.

(*a*) *In re* Cunningham and Frayling, (1891) 2 Ch. 567.

(*b*) Forster *v.* Abraham, L. R. 17 Eq. 351.

(*c*) *In re* Skeat's Settlement, 42 C. D. 522. In this case the power was to appoint any "other" person or persons, but the judgment of the Court was founded on the general principle that the power was fiduciary.

(*d*) The cases which decide that a power of sale or leasing cannot be exercised by a tenant for life without the consent of his alienee are founded on the doctrine that the donee of a power may not derogate from his own grant, *i.e.*, may not take away what he has already granted (Alexander *v.* Mills, L. R. 6 Ch. 124), and do not apply to a power of appointing new trustees. See Hardaker *v.* Moorhouse, 26 C. D. 417.

Trustee becomes *unfit* by bankruptcy.

It has been held that a trustee becoming bankrupt is a person *unfit* to act (*e*), but not a person *incapable* to act (*f*), within the meaning of a power to appoint new trustees. It follows that the statutory power, which includes the case of a trustee unfit to act, can be exercised in case of bankruptcy.

Expense of appointments.

The expense of the appointment of new trustees must generally be borne by the trust estate.

Power of Court to appoint new trustees under Trustee Act,

If the instrument contains no power to appoint new trustees in the event of death, incapacity, or otherwise, and the power conferred by the Conveyancing Act, 1881, does not apply to the instrument in question, and the concurrence of all the *cestuis que trust* cannot be obtained, the only means of procuring the appointment of a new trustee, except in cases under the Settled Land Acts, is by applying to the Court under the Trustee Act, 1850 (*g*), which in effect enables the Court to appoint new trustees, whenever it is found inexpedient, difficult, or impracticable to make such appointment otherwise, and to make orders vesting any lands subject to the trust in the new trustees.

and under Settled Land Act.

As regards settled land, the Court has power to appoint trustees for the purposes of the Settled Land Acts, whenever there are no such trustees, or it is otherwise expedient that new trustees should be appointed (*h*).

Where the trust property is being administered in Court power remains exercisable subject to supervision of Court.

Where there is an administration action, the decree does not take away the power to appoint new trustees, conferred by the instrument, but the donee can only exercise it subject to the supervision of the Court; and if he nominates a fit person, the Court will not nominate someone else because it may prefer the latter. If the donee nominates a person whom the Court does not think fit and proper, the Court will not itself make the appointment, but call on the donee to make a fresh one (*i*).

(*e*) *In re* Roche, 2 Dr. & W. 187.
(*f*) Bainbrigge *v.* Blair, 1 Beav. 495.
(*g*) 13 & 14 Vict. c. 60.
(*h*) Settled Land Act, 1882, s. 38.
(*i*) *Re* Gadd, 23 C. D. 134.

VIII. *The provisions of the Trustee Relief Acts.*

Several Acts have been passed during the present reign for the relief of trustees.

10 & 11 Vict. c. 96.

The 10 & 11 Vict. c. 96, enables trustees, executors, administrators, or other persons having trust moneys in their hands, or having any stocks or government or parliamentary securities standing in their names, or in the names of their testator, &c., to pay, transfer, or deposit the same into Court, and thus discharge themselves from their trust (*l*).

Cases in which trustees are justified in paying money, &c. into Court.

It was formerly considered that a trustee having funds in his hands was at liberty under any circumstances to pay them into Court, under the Trustee Relief Acts, if he was so minded (*m*). This doctrine has, however, been modified by subsequent decisions, the result of which may be thus stated, *viz.*, that where there is any *bonâ fide* question as to the party entitled to the fund, the trustee is not bound to take upon himself the responsibility of deciding such question, and if he pays the fund into Court will be entitled to the costs of such payment, and also to his costs of the application for obtaining it out of Court (*n*); but if a trustee pays the fund into Court when there is no reasonable doubt as to the title of the persons claiming it, or under other circumstances which in the opinion of the Court render such a course unnecessary and vexatious, he will not only be refused his own costs of the application by the party entitled for the payment of the fund out of Court, but will also be decreed to pay the costs of the petitioner (*o*); nor will a trustee be justified in paying money into Court under the Act after notice of the intention of the *cestui que trust* to bring an action to have the accounts taken (*p*).

(*l*) See also 12 & 13 Vict. c. 74.

(*m*) *In re* Croyden's Trust, 14 Jur. 54.

(*n*) *In re* Headington's Trust, 27 L. J. Ch. 175; *Re* Wylly's Trust, 28 Beav. 458; *Re* Bendyshe, 26 L. J. Ch. 814; *Re* Jones, 3 Drew. 679.

(*o*) *Re* Woodburn's Trust, 1 De G. & J. 333; *Re* Cater's Trust, 25 Beav. 361; *Re* Knight's Trust, 27 Beav. 45. See also *In re* Fagg's Trust, 19 L. J. Ch. 175; Foligno's Trust, 32 Beav. 131; Leake's Trust, *ib.* 135; *In re* Elliot's Trusts, L. R. 15 Eq. 194.

(*p*) *In re* Waring, 16 Jur. 252.

Where a fund was held in trust for A. for life, with remainder in trust for such person as A. should by deed or will appoint, and in default of appointment in trust for B., and after the death of A. his solicitor wrote to the trustee that there was no ground for supposing that he ever made an appointment, it was held that the trustee ought to have been satisfied with the evidence, and was not justified in paying the money into Court(*q*).

Money given to a married woman may be paid into Court.

A trustee having in his hands money belonging absolutely to a married woman (not for her separate use) is not bound to pay it to her husband upon the joint request of both; but may, if he thinks fit, pay it into Court under this Act, so as to give her the opportunity of asserting her equity to a settlement(*r*).

Purchase-money may be paid into Court when trustees have no power to give discharge.

If a sale is made by trustees who have no power to give valid discharges, the difficulties arising from this imperfection of the instrument as to the payment of the purchase-money may be removed by paying the money into Court under the provisions of this Act(*s*); and there can be no doubt that the surplus proceeds of a sale under a power in the hands of a mortgagee are held on a trust within the meaning of the statute(*t*). The owner of land charged with a legacy cannot pay the legacy into Court under this Act(*u*), but he can do so under sect. 5 of the Conveyancing Act 1881. Money payable under a policy of life assurance is not money held upon a trust(*x*), nor is money deposited with a banker(*y*), and, consequently, in neither case can it be paid into Court under the Trustee Relief Act. But if the money is paid in, and the person claiming it petitions for its payment out, he thereby recognises the payment, and cannot object to pay the costs incidental thereto(*y*).

(*q*) *Re* Cull's Trusts, 20 Eq. 561, observing on *Re* Wylly's Trust, 28 Beav. 458.
(*r*) *Re* Swan, 2 H. & M. 34.
(*s*) Cox *v.* Cox, 1 Kay & J. 251.
(*t*) Darling's Admin. of Trust Funds, 10.
(*u*) *In re* Buckley's Trusts, 17 Beav. 110.
(*x*) Matthew *v.* Northern Assurance Society, L. R. 9 C. D. 80.
(*y*) *Re* Sutton's Trusts, 12 C. D. 175.

The payment of a trust fund into Court does not, of course, protect the trustees from responsibility in respect of prior breaches of trust (*z*).

22 & 23 Vict. c. 35, s. 30.

By the 22 & 23 Vict. c. 35, s. 30, trustees, executors, and administrators are enabled to obtain the opinion, advice, or direction of the Court on any question respecting the management or administration of the trust property, or the assets of the testator or intestate.

Originating summons.

And by the Rules of the Supreme Court, 1883, Order LV., the executors or administrators of a deceased person, and the trustees under any deed or instrument, may take out as of course an originating summons, returnable in the chambers of a judge of the Chancery Division, for the determination of any question arising in the administration of the estate or trust.

In cases where the trust estate does not exceed in amount or value £500, all proceedings under the Trustee Relief Acts, or under the Trustee Acts, may be in the County Court under the Act 28 & 29 Vict. c. 99.

IX. *Miscellaneous points relating to trustees.*

Duty of bare trustee.

It is the duty of a bare trustee, on the request of the person who may be entitled to the entire equitable interest, to convey the legal estate to him, and such trustee would be compelled to pay the costs of any suit which might be instituted against him for this purpose in consequence of his refusal to execute such a conveyance (*a*). The equitable interest of the beneficial owner, however, must be absolute; and if there remains in the trustee any purpose unperformed for which the legal estate is vested in him, he is entitled to refuse to execute any conveyance until those purposes are fully performed. As a trustee holds the legal estate for all persons who are interested in the equitable estate, he must be careful (in dealing with

(*z*) Attorney-General *v.* Alford, 4 De G. M. & G. 843.

(*a*) Willis *v.* Hiscox, 4 My. & Cr. 197; Burtinshaw *v.* Martin, 5 Jur. N. S. 647.

the legal estate) to regard all such interests so far as he obtains notice of the equities respectively.

Conveyance of legal estate where trustee disabled.

Where by reason of the disability of a trustee, or other circumstances, a conveyance of a legal estate outstanding in a trustee cannot be obtained, it is necessary to resort to the Chancery Division of the High Court of Justice under the Trustee Acts for a vesting order, or for an order authorizing some person to convey in the place of the trustee under disability, &c. (*b*).

(*b*) By the Trustee Act, 1850, the Lord Chancellor is empowered to make such order as he may think fit for vesting and releasing lands held upon trust or by way of mortgage in the following cases:—

When any lunatic or person of unsound mind is seised or possessed of lands on any trust or by way of mortgage (sect. 3), or is entitled to any contingent right in such lands (sect. 4).

When any infant is seised or possessed of any such lands (sect. 7) (see *In re* Howard, 21 L. J. Ch. 437; *In re* Williams, 5 De G. & S. 515; *Ex parte* Grieve, 5 De G. & S. 436), or is entitled to any contingent right in such land (sect. 8).

When any person solely seised or possessed of any lands upon any trust is out of the jurisdiction of the Court of Chancery, or cannot be found (sect. 9).

When any person or persons shall be seised or possessed of any lands jointly with a person out of the jurisdiction of the Court of Chancery, or who cannot be found (sect. 10).

When any person solely entitled to a contingent right in any lands upon any trust shall be out of the jurisdiction of the Court of Chancery, or cannot be found (sect. 11).

When any person jointly entitled with any other person or persons to a contingent right in any lands upon any trust shall be out of the jurisdiction of the Court of Chancery, or cannot be found (sect. 12).

Where there shall have been two or more persons jointly seised or possessed of any lands upon any trust, and it shall be uncertain which of such trustees was the survivor (sect. 13).

When any one or more person or persons shall have been seised or possessed of any lands upon any trust, and it shall not be known, as to the trustee last known to have been seised or possessed, whether he be living or dead (sect. 14).

When any person seised of any lands upon any trust shall have died intestate as to such lands without an heir, or shall have died, and it shall not be known who is his heir or devisee (sect. 15).

When any lands are subject to a contingent right in an unborn person or class of unborn persons, who upon coming into existence would in respect thereof have become seised or possessed of such lands upon any trust (sect. 16).

When any person jointly or solely entitled to lands, or to a contingent right in lands, upon any trust, shall after a demand by a person entitled to require a conveyance or assignment of such lands, or a duly authorized agent, have stated in writing that he will not convey or assign the same, or shall neglect or refuse to convey or assign such lands for

If the trust estate does not exceed in amount or value £500, the application may be made to the County Court under the Act 28 & 29 Vict. c. 99, s. 1.

On death of a trustee, fee simple devolves on his personal representative.

It is provided by a clause in the Land Transfer Act, 1875 (*c*), that upon the death of a bare trustee intestate as to any corporeal or incorporeal hereditament, of which such trustee was seised in fee simple, such hereditament shall vest like a chattel real in his legal personal representative. This clause is repealed, as regards a trustee dying after the 31st December, 1881, by the Conveyancing Act, 1881 (*d*), under which last-mentioned Act an estate of inheritance or *pur auter vie* in freehold land vested in a trustee passes on his death to his personal representative, whether he makes a will or dies intestate, and whether he is a bare trustee or has active duties to perform (*e*).

The above provisions obviate the necessity for an application to the Court where a trustee has died leaving an infant heir, in those cases to which they apply.

Right of trustees to retain title deeds.

Trustees other than bare trustees have, as a general rule, the right to retain title deeds which have been delivered to them by the settlor or have otherwise come into their hands (*g*), but the *cestuis que trust* have a right to inspect and take copies at any time (*h*), and this extends to a *cestui que trust* of the proceeds of sale, in the absence of special circumstances (*i*). A legal

As between tenant for

twenty-eight days next after a proper deed for conveying the same shall have been tendered to him by any person entitled to require the same, or by such agent (sects. 17, 18).

The 28th section declares what shall be the effect of an order vesting copyholds or appointing any person to convey copyholds.

And by the Trustee Act Extension Act (15 & 16 Vict. c. 55), the Lord Chancellor is empowered to make such an order when any person shall be jointly or solely seised or possessed of any lands, or entitled to any contingent right therein upon any trust, and a demand shall have been made upon such trustee by a person entitled to require a conveyance or assignment of such lands, or a duly authorized agent of such last-mentioned person, requiring such trustee to convey or assign the same or to release such contingent right (sect. 2).

(*c*) Sect. 48.

(*d*) Sect. 30.

(*e*) This does not extend to copyholds. 50 & 51 Vict. c. 73, s. 45.

(*g*) Garner *v.* Hannyngton, 22 Beav. 630; Stamford *v.* Roberts, L. R. 6 Ch. 307.

(*h*) *Ex parte* Holsworth, 4 Bing. N. C. 386; 7 L. J. (N. S.) C. P. 225.

(*i*) *In re* Cowrie, 33 C. D. 179.

tenant for life has a right to the custody of the deeds, unless he has been guilty of misconduct so that the safety of the deeds is endangered, or there is a pending suit relating to the property, and it is more convenient for the purposes of the suit that they shall be in Court (*k*). Any person entitled to a *vested* remainder may require the tenant for life to produce the title deeds for the remainderman's inspection, in order to enable him to dispose of, or otherwise deal with, the property (*l*). It has been held that this right does not extend to a person entitled to a contingent remainder (*m*), but it is doubtful whether this decision would be followed at the present day. An equitable tenant for life in possession to whom the deeds have been delivered may retain them as against the trustees (*n*), and as between an equitable tenant for life and the trustees, where neither has obtained possession, the Court will, as a general rule, order them to be delivered to the former on his undertaking not to part with them without the consent of the trustees, and to produce them upon all reasonable occasions (*o*). life and remainderman.

If a trustee (and for this purpose the tenant for life of a settled leasehold property is considered a trustee (*p*)) renews a lease, the renewed lease will enure for the benefit of the trust (*q*), and it makes no difference that the lease has not usually been renewed (*r*), or that the old lease has expired (*s*), or that the renewal was for a different term or at a different rate; and the rule has been held to apply where the tenant for life of an underlease purchased the leasehold reversion and then took a renewal from the superior lessor (*t*). Renewal of lease by trustee or tenant for life enures for the benefit of the trust.

The doctrine that a renewal of leaseholds by a Doctrine applies to

(*k*) Leathes *v.* Leathes, 5 C. D. 221.

(*l*) Davis *v.* Earl of Dysart, 20 Beav. 405; Pennell *v.* Earl of Dysart, 27 Beav. 542.

(*m*) Noel *v.* Ward, 1 Mad. 322.

(*n*) Taylor *v.* Sparrow, 4 Giff. 703.

(*o*) *Re* Burnaby, 42 C. D. 621.

(*p*) Taster *v.* Marriott, Amb. 668; Rawe *v.* Chichester, *ib.* 715.

(*q*) Edwards *v.* Lewis, 3 Atk. 538.

(*r*) Killick *v.* Flexney, 4 B. C. C. 161.

(*s*) Edwards *v.* Lewis, *ubi supra;* James *v.* Dean, 11 Ves. 383.

(*t*) Giddings *v.* Giddings, 3 Russ. 241; Leigh *v.* Burnett, 29 C. D. 231.

purchase of reversion.

tenant for life enures to the benefit of the remainderman applies equally to a purchase of the freehold reversion (*u*).

Duty of trustees of leaseholds as to repairs.

Where leasehold property is vested in trustees in trust for A. for life, with remainders over, and there is no express direction as to repairs, the tenant for life is not bound to keep the property in repair out of the rents. But as the trustees are liable to the covenants in the lease, they are entitled for their own protection, and ought, it is apprehended, in order to prevent a forfeiture, to do the necessary repairs out of corpus (*x*).

Trustee cannot charge for professional services.

It is an established rule that a trustee, executor, or administrator shall have no allowance for his care and trouble (*y*), and consequently a trustee who is a solicitor is only entitled to be repaid costs out of pocket, and cannot charge the trust estate for his professional services (*z*). The rule equally applies where the trustee is a member of a firm of solicitors, and the business is done by the firm (*a*); and it applies to all professional persons, and not to solicitors only (*b*).

Solicitor trustee preparing a lease must account to trust estate for costs received from lessee.

In accordance with the above rule, it has been held that if a trustee solicitor and his firm make profit costs by preparing leases, which costs are paid by the tenants, the solicitor must account to the trust estate for the costs thus received (*c*).

Mortgagee in possession, or selling under power, is a *quasi* trustee.

A mortgagee, as such, is not a trustee, but if he enters into possession (*d*), or sells under the power of sale (*e*), he thereby places himself in a fiduciary position, and if he receives the rents himself or acts pro-

(*u*) Phillips *v.* Phillips, 29 C. D. 673.

(*x*) *In re* Courtier, 34 C. D. 136. In the case of *In re* Fowler, 16 C. D. 723, Fry, J., held that the trustees ought to do the repairs out of the rents; but the decision, if it can be supported at all, must be considered as depending on the special circumstances.

(*y*) Robinson *v.* Pett, 3 P. Wms. 248.

(*z*) Moore *v.* Frowd, 3 M. & C. 45; Pollard *v.* Doyle, 1 Drew. & Sm. 319.

(*a*) Christophers *v.* White, 10 Beav. 523; Lincoln *v.* Windsor, 9 Hare, 158; Broughton *v.* Broughton, 2 Sm. & Gif. 422; S. C. 5 De G. M. & G. 160.

(*b*) Matthison *v.* Clarke, 3 Drew. 3.

(*c*) *In re* Corsellis, 34 C. D. 675.

(*d*) Bonithon *v.* Hockmore, Vern. 315.

(*e*) Matthison *v.* Clarke, 3 Drew. 3.

fessionally in conducting a sale, is not entitled to any commission or profit costs.

Mortgagee, as such, cannot charge for his trouble.

And even where a mortgagee has not placed himself in a fiduciary position to the mortgagor, he cannot charge the mortgaged property or the mortgagor for any personal services rendered by him. Thus it has been held that if a solicitor prepares a mortgage or a transfer of a mortgage to himself, he cannot charge the mortgagor for its preparation (*f*); and if a solicitor mortgagee acts for himself in a suit in defence of his own title, or in a foreclosure or redemption action, he cannot recover profit costs (*g*).

Solicitor trustee or mortgagee may agree that partner be employed, the latter taking the whole profit.

Where solicitor one of a firm, other partner will be allowed his share of charges.

But a solicitor trustee or mortgagee may employ his partner to act in any business relating to the trust or mortgage security, and may pay him the usual charges, provided that it has been expressly agreed between them that the partner so employed shall take the whole profit (*h*). And in accordance with this principle, it was held in a recent case that where mortgagees, one of whom, A., was a solicitor carrying on business in partnership with B., employed the firm of A. and B., and charges were made by the firm which would have been proper had an independent solicitor been engaged, the amount of those charges ought to be apportioned between A. and B. in proportion to their shares in the general profits of the firm, and that the part payable to B. ought to be allowed, but not the part payable to A. (*i*).

Exception to general rule, established by *Cradock* v. *Piper*, applies only to proceedings in Court,

An exception to the general rule that a solicitor trustee is only entitled to costs out of pocket has been established by the case of *Cradock* v. *Piper* (*k*), in which case it was decided that when a solicitor or his firm appears in an action on behalf of himself and a co-trustee, and the expense is not thereby increased, then the solicitor or his firm is entitled to the usual costs. The exception is an anomaly, and will not be

(*f*) *In re* Roberts, 43 C. D. 52; *In re* Wallis, 25 Q. B. D. 176.

(*g*) Schlater *v.* Cottam, 3 Jur. N. S. 630; *In re* Doody, W. N. 1892, p. 144.

(*h*) Clack *v.* Carlton, 7 Jur. N. S. 441; 30 L. J. Ch. 639.

(*i*) *In re* Doody, *ubi supra.*

(*k*) 1 M. & G. 664; see *In re* Corsellis, 34 C. D. 675.

and not to a solicitor mortgagee.

extended, and it does not apply to a solicitor mortgagee (*l*).

Effect of clause authorizing trustee to charge for professional services.

If the settlor or testator expressly authorizes the trustee to retain his professional costs, he will be allowed to charge for everything which, if he had not been a trustee, he would have been justified in employing a solicitor to do; but he will not be allowed his charges for things which an executor or trustee ought to do without the intervention of a solicitor, such as for attendances to pay premiums on policies, attendances at the bank to make transfers, attendances on proctors, auctioneers, legatees, and creditors (*m*).

When trustee may plead Statute of Limitations.

In case of any claim against a trustee, the Trustee Act, 1888, enables him to plead the Statute of Limitations like any other person, except where the claim is founded upon any fraud or fraudulent breach of trust, or to recover trust property converted by him to his own use (*n*).

Power for executors and trustees to compound, &c.

The Conveyancing Act, 1881, sect. 37, provides as follows:—

> An executor or two or more trustees acting together, or a sole acting trustee, where by the instrument, if any, creating the trust, a sole trustee is authorized to execute the trust and powers thereof, may, if and as he or they think fit, accept any composition, or any security, real or personal, for any debt, or for any property, real or personal, claimed, and may allow any time for payment of any debt, and may compromise, compound, abandon, submit to arbitration, or otherwise settle any debt, account, claim, or thing whatever relating to the testator's estate, or to the trust, and for any of those purposes may enter into, give, execute, and do such agreements, instruments of composition or arrangement, releases and other things as to him or them seem expedient, without being responsible for any loss occasioned by any act or thing so done by him or them in good faith.

(*l*) *In re* Doody, *ubi supra*. 325.
(*m*) Harbin *v.* Darby, 28 Beav. (*n*) Sect. 8.

HUSBAND AND WIFE.(a)

Division of subject.

It is proposed in this Dissertation to consider—I. The right of separate property conferred on the wife by the Married Women's Property Acts: II. The interest of the husband in his wife's real estate, chattels real, chattels personal, choses in action, and reversionary interests in personalty not being her separate property by virtue of the above-mentioned Acts or otherwise: III. The wife's equity to a settlement out of property accruing to her after the marriage and not subject to the above-mentioned Acts: IV. Trusts for the separate use of a married woman, either with or without a restraint on anticipation: V. The liability of the wife's separate property, and of the husband, for the wife's debts and engagements contracted during the coverture and before marriage respectively: VI. The effect of separation or desertion as to the wife's property and her capacity to contract.

I. *The right of separate property conferred on the wife by the Married Women's Property Acts.*

The law relating to the property of married women has been materially altered (1) by the Married Women's Property Act, 1870 (*b*), which came into operation on the 9th August, 1870, and (2) by the Married Women's Property Act, 1882 (*c*), which came into operation on

(*a*) This subject has been to some extent anticipated in the first volume, as to the disabilities of married women in reference to the sale of land and as to dower.

(*b*) 33 & 34 Vict. c. 93.

(*c*) 45 & 46 Vict. c. 75.

the 1st January, 1883, and which repeals the Act of 1870, except as regards acts done and rights acquired under it while in force.

Effect of Acts.

The effect of these enactments may be thus stated :—

Woman married since 1882 entitled to all her property for her separate use;

and disentailing deed by her need not be acknowledged.

1. Every woman who has married since the 31st December, 1882, is entitled to hold as her separate property, and to dispose of by will or otherwise, all real and personal property belonging to her at the time of the marriage or acquired by or devolving on her afterwards (*d*). She may under this enactment bar an estate tail or convert a base fee into a fee simple absolute by an unacknowledged deed as if she were a *feme sole* (*e*).

Woman married before 1st January, 1883, entitled for her separate use to property accruing in title after 1882.

2. Every woman who has married before the 1st January, 1883, is entitled to hold as her separate property, and to dispose of by will or otherwise, all real and personal property, her title to which, whether vested or contingent, and whether in possession, reversion, or remainder, accrues after the above date (*f*). Property which was reversionary on the above date, but has fallen into possession since, is not within this section (*g*). But a mere *spes successionis*, *e.g.*, the possibility of becoming entitled under a trust for the persons who shall be the next of kin of A. on the failure of preceding trusts, is not a reversionary interest for this purpose (*h*).

Woman married since 9th August, 1870, entitled for her separate use to certain kinds of property.

3. Every woman who has married between the 9th August, 1870, and the 31st December, 1882 (inclusive), is entitled to hold as her separate property and to dispose of (1) any personal property which has come to her, since the marriage and before 1883, as next of kin or one of the next of kin of an intestate; (2) any sum of money not exceeding £200 which has come to her since the marriage under any deed or will, and (3) the rents and profits of any freehold, copyhold, or customaryhold property which has descended upon

(*d*) Sect. 2 (1882).
(*e*) *In re* Drummond and Davis's Contract, (1891) 1 Ch. 524.
(*f*) Sect. 5 (1882).
(*g*) Reid *v.* Reid, 31 C. D. 402.
(*h*) *In re* Parsons, 45 C. D. 51.

her, since the marriage and before 1883, as heiress or co-heiress of an intestate (*i*).

Married woman entitled to wages and earnings in separate employment since 8th Aug. 1870.

4. A married woman, whatever may be the date of her marriage, is entitled for her separate use to any wages, earnings, money, and property, acquired or gained by her since the 8th August, 1870, in any employment, trade, or occupation in which she is engaged, or which she carries on separately from her husband, or by the exercise of any literary, artistic, or scientific skill, and all investments of such wages, earnings, moneys, or property (*k*).

Wife authorized by Act of 1870 to acquire separate interest in certain kinds of property.

5. By the Act of 1870, a married woman, or any woman about to be married, was enabled, by taking the steps prescribed for that purpose, to acquire a separate property in, (1) any sum forming part of the public stocks or funds, and not being less than £20; (2) fully paid-up shares or debentures, or debenture stock, or any stock to the holding of which no liability was attached, in any incorporated or joint stock company; and (3) shares, debentures, or any other interests in any industrial, provident, friendly, benefit, building, or loan society duly registered (*l*).

Deposits in banks, stock in the funds, &c., in name of wife on 1st January, 1883, to be deemed her separate property.

6. All deposits in any post office or other savings bank or in any other bank, all annuities granted by the Commissioners for the Reduction of the National Debt, or by any other person, and all sums forming part of the public stocks or funds, or of any other stocks or funds transferable in the books of the Bank of England, or of any other bank, which on the 1st January, 1883, were standing in the sole name of a married woman, and all shares, stock, debentures, debenture stock, or other interests of or in any corporation, company, or public body, municipal, commercial, or otherwise, or of or in any industrial, provident, friendly, benefit, building, or loan society, which on that day were standing in her name are to be deemed, unless and until the contrary be shown, to be the separate pro-

(*i*) Sects. 7, 8 (1870). This only applies to the rents and profits during the wife's life. Johnson *v.* Johnson, 35 C. D. 345.

(*k*) Sect. 2 (1870); sects. 2, 5 (1882).

(*l*) Sect. 5 (1870).

perty of such married woman; and the fact that any such deposit, &c., was standing in the sole name of a married woman, is sufficient *primâ facie* evidence that she was beneficially entitled thereto for her separate use, so as to authorize and empower her to receive or transfer the same, and to receive the dividends, interest, and profits thereof, without the concurrence of her husband (*m*).

Stock, &c., hereafter transferred, &c., to a married woman to be for her separate use.

7. All sums forming part of the public stocks or funds, or of any other stocks or funds transferable in the books of the Bank of England, or of any other bank, and all such deposits and annuities respectively as are mentioned in the preceding paragraph, and all shares, stock, debentures, debenture stock, and other interests of or in any such corporation, company, public body, or society as aforesaid, which on or after the 1st January, 1883, are allotted to or placed, registered, or transferred in or into or made to stand in the sole name of any married woman, are to be deemed, unless and until the contrary be shown, to be her separate property. But a corporation or joint stock company will not be required to admit any married woman to be a holder of any shares or stock therein to which any liability is incident, contrary to the provisions of any Act of Parliament, charter, byelaw, articles of association, or deed of settlement regulating such corporation or company (*n*).

Stock, &c., standing in joint names of wife and another.

8. The above provisions extend and apply, so far as relates to the interest of the married woman, to any of the particulars aforesaid which may be standing in the name of any married woman jointly with any persons or person other than her husband (*o*).

Husband need not join in transfers.

9. The wife may transfer any of the above particulars without her husband's concurrence; and if she makes any fraudulent investment in her own name with his money, he may apply to the Court for relief (*p*).

Settlements not affected by Act.

10. The Act of 1882 does not interfere with or

(*m*) Sect. 6 (1882).
(*n*) Sect. 7.
(*o*) Sect. 9.
(*p*) Sect. 10.

affect any settlement or agreement for a settlement made or to be made, whether before or after marriage, respecting the property of any married woman (*q*). Any such settlement will have effect as if the Act had not passed. Thus a covenant by the husband to settle his wife's after-acquired property will bind any property which but for the Act would have come to him in her right (*r*).

It appears from what has been above stated, that where the marriage has taken place since the 31st December, 1882, or where, the marriage having taken place on or before that day, the wife has acquired property afterwards, the marital right during coverture is, in the absence of a settlement, altogether excluded. But after the coverture, if the husband survives his wife, his right in respect of any property which she may leave, and as to which she dies intestate, will be the same as under the old law. Thus, he will be entitled to curtesy in her freehold lands of inheritance, when there has been issue of the marriage (*s*), and will be absolutely entitled to her personal estate in his own right as regards chattels real or chattels personal in possession, and as regards choses in action on taking out administration (*t*).

Husband surviving wife entitled to curtesy in land of inheritance, and to administration, if she dies intestate.

II. *The interest of the husband in his wife's real estate, chattels real, chattels personal, choses in action, and reversionary interests in personalty, not being her separate property under the above-mentioned Acts or otherwise.*

As regards property not within the Act of 1882, the former law is still in operation, subject to the exceptions introduced by the Act of 1870. It therefore remains to consider what interest a husband takes in his wife's property subject to the old law.

Right of husband married before 1883 in wife's property not within Acts.

(*q*) Sect. 19.
(*r*) *Re* Stoner's Trusts, 24 C. D. 195; *Re* Whitaker, 34 C. D. 227; Hancock *v.* Hancock, 38 C. D. 78.
(*s*) Cooper *v.* Macdonald, 7 C. D. 289; Hope *v.* Hope, (1892) 2 Ch. 336.
(*t*) See Molony *v.* Kennedy, 10 Sim. 254; *In re* Lambert's Estate, 39 C. D. 626.

Freeholds and copyholds.

As regards freehold and copyhold property, the husband is entitled to the rents and profits during the joint lives. He is also entitled, if he survives his wife, and there has been issue born alive of the marriage, to an estate during his life, called an estate by the curtesy, in any freehold property to which the wife was entitled in possession at any time during the coverture, for an estate of inheritance descendible to such issue.

On what property curtesy attaches.

The following points with respect to curtesy are settled by authority, viz., (1.) Curtesy attaches to an undivided share of land held in coparcenery, or in common, but not to land held in joint tenancy, nor to a reversion or remainder which does not fall into possession during the coverture (*u*). (2.) Where contingent remainders intervene between a limitation to a wife for life and a reversion in her in fee, the right of curtesy exists until the contingency happens (*x*). (3.) Curtesy attaches to an equity of redemption (*y*), and to money directed to be laid out in land (*z*), and to a trust estate (*a*). (4.) Curtesy attaches to land belonging to the wife for her separate use, if and so far as it is not disposed of by the wife in her lifetime or by her will (*b*). (5.) Curtesy attaches to land of which the wife is tenant in tail, provided that a child is born capable of taking under the entail, although the wife may eventually die without issue, and to land in which the wife has an estate of inheritance subject to an executory limitation over, provided that a child is born, and the wife's estate is such as, notwithstanding the executory limitation, might have descended to such child. Thus, in a case where an estate was devised to a woman in fee, with an executory limitation over in case she should die under twenty-one and without leaving issue; the devisee had a child, the child died, and then the mother died under twenty-

(*u*) Co. Litt. 29.
(*x*) Boothby *v.* Vernon, 9 Mod. 147.
(*y*) Casborne *v.* Scarfe, 1 Atk. 603.
(*z*) Cunningham *v.* Moody, 1 Ves. sen. 174.
(*a*) Watts *v.* Ball, 1 P. Wms. 108.
(*b*) Cooper *v.* Macdonald, 7 C. D. 289.

one, and it was held that the husband was tenant by the curtesy (*c*). But where there was a devise to A. in fee, and if she died leaving issue, then to such issue, it was held that as the issue took as purchasers, and could not have taken by descent, there was no curtesy (*d*).

Copyholds.

There is no curtesy in copyholds except by special custom (*e*).

Husband's interest in chattels real of wife.

With respect to the chattels real of a woman married before the 1st January, 1883, not being her separate property under the above-mentioned Acts or otherwise, the husband is entitled to the rents and profits during the joint lives, and he has an absolute power of disposing of them either voluntarily or for a valuable consideration, by act *inter vivos*, and this power extends to reversionary and contingent interests, unless the interest is of such a nature that it cannot by possibility vest in the wife in possession during the coverture (*f*); but so far as this power is not exercised by a complete act during the coverture, they go to the survivor, without administration.

Chattels personal.

The chattels personal of a wife married before the above date (not being her separate property under the Acts or otherwise) belong absolutely to the husband, so far as he obtains possession of them during the coverture. The wife's paraphernalia, viz., her wearing apparel, and ornaments suitable to her condition in life, are a partial except to this rule. These pass to the wife if she survives, but she cannot give them away in her lifetime. The husband may dispose of them (except wearing apparel) by an act *inter vivos*, but not by will, and they are subject to his debts (*g*).

Choses in action.

With respect to the *choses in action* of a wife married before the above date (not being her separate property under the above-mentioned Acts or otherwise)—which term comprises debts owing to her, arrears of rent,

(*c*) Buckworth *v.* Thirkell, 3 Bos. & Pull. 652, note. See also Moody *v.* King, 2 Bing. 447.

(*d*) Barker *v.* Barker, 2 Sim. 249. See also Sumner *v.* Partridge, 2 Atk. 47.

(*e*) Gilb. Ten. 288.

(*f*) Duberley *v.* Day, 16 Beav. 33.

(*g*) 2 Steph. Com. 287.

legacies, reversionary interests in personal estate, stock in the funds, shares in companies (*e*), and other personal property not in possession—the husband acquires an absolute interest in the same, so far as they are reduced by him into possession during the coverture, but not otherwise; and an assignment for a valuable consideration of the wife's choses in action by the husband is void against the wife surviving, if the husband die before he or the assignee has reduced them into possession, although they could have been immediately reduced into possession, but from neglect or other causes have been left outstanding (*f*).

What amounts to a reduction into possession.

A chose in action is considered to be reduced into possession by the husband when he receives a sum owing to his wife, or when a fund is transferred into his name, or when a fund or money belonging to the wife is transferred into the name of, or paid to, a third party at the request of the husband (*g*).

Where money is paid to the wife or her agent, it will be considered as reduced into possession, and becomes at once the husband's property (*h*); but where money was paid into the hands of a third party, to be appropriated to the use of a married woman, and he wrote to her informing her that he had it at her disposal, this was not considered a reduction into possession (*i*).

Effect of judgment at law or decree in equity.

If the chose in action is recoverable at law, and the husband obtains judgment, but dies before execution, it has been held that the debt goes to the wife, and not to the husband's executor (*k*). On the other hand it was decided in two early cases that the order or decree of a court of equity for *payment* of a fund to the husband was a reduction into possession (*l*). The ground of these decisions appears to have been that a decree in equity was distinguishable from a judgment at law,

(*e*) Colonial Bank *v.* Whinney, 11 App. Cas. 426.

(*f*) Ellison *v.* Elwin, 13 Sim. 309; Ashby *v.* Ashby, 1 Coll. 553; Hutchings *v.* Smith, 9 Sim. 137; Michelmore *v.* Mudge, 2 Giff. 183.

(*g*) See Hansen *v.* Miller, 14 Sim. 22; Allday *v.* Fletcher, 1 De G. & J. 82; Hamilton *v.* Mills, 29 Beav. 193.

(*h*) Carne *v.* Brice, 7 M. & W. 183; Molony *v.* Kennedy, 10 Sim. 254.

(*i*) Fleet *v.* Perrins, L. R. 4 Q. B. 500.

(*k*) Bond *v.* Simmons, 3 Atk. 20.

(*l*) Heygate *v.* Annesley, 3 Bro. C. C. 362; Forbes *v.* Phipps, 1 Eden, 502.

because in the case of a judgment an ulterior step has to be taken by the party recovering to make it operate upon the thing recovered (*m*).

What is not a reduction into possession.

The receipt by the husband of interest on his wife's mortgage debts or other choses in action does not constitute a reduction into possession of the principal (*n*). Again, a payment of the fund into Court by the trustee is not of itself a reduction into possession (*o*), nor a transfer by executors of a fund belonging to a married woman into the names of other trustees for her benefit (*p*), nor a transfer of the fund into the wife's name (*q*), or into the joint names of husband and wife (*r*). In a case where the husband was executor and trustee, it was held that his possession in that character was not a reduction into possession of the wife's share of the residue so as to entitle his executor to it, as against the wife surviving (*s*).

Where the chose in action cannot fall into possession during the husband's life, it is impossible for him to assign it as against his wife surviving.

In what cases a husband can release choses in action of wife.

If the chose in action is immediately recoverable *at law*, it may be released by the husband.

Where a husband agreed with the executor that a legacy given to his wife should be set off against a sum of the same amount owing from him to the testator on his promissory note, and the husband and wife signed a *receipt* for the legacy, but it did not appear that the promissory note was given up, it was held that the wife having survived, was entitled to the legacy, no *release* having been given for it by the husband (*t*). But in a case where a married woman was entitled to a sum of money owing to her on a promissory note, and

(*m*) Note to Forbes *v.* Phipps, 1 Eden, 508.

(*n*) Michelmore *v.* Mudge, 2 Giff. 183; *Ex parte* Norton, 8 De G. M. & G. 258.

(*o*) Macaulay *v.* Philips, 4 Ves. 15.

(*p*) Ryland *v.* Smith, 1 My. & Cr. 53. See also Rawlins *v.* Birkett, 25 L. J. Ch. 837; Topham *v.* Morecraft, 4 Jur. N. S. 611; Wall *v.* Tomlinson, 16 Ves. 413; Bourton *v.* Williams, L. R. 5 Ch. App. 655.

(*q*) Wildman *v.* Wildman, 9 Ves. 174.

(*r*) Prole *v.* Soady, L. R. 3 Ch. App. 220; Nicholson *v.* Drury, &c. Compy., 7 C. D. 48.

(*s*) Baker *v.* Hall, 12 Ves. 497.

(*t*) Harrison *v.* Andrews, 13 Sim. 595.

the husband agreed with the debtor that the promissory note should be cancelled, and that in consideration thereof the debtor should give his bond for the same amount to trustees nominated by the husband upon the trusts of a post-nuptial settlement, and the debtor gave such bond accordingly, it was held that this transaction amounted to a reduction into possession, and that the right of the wife by survivorship was effectually barred (*u*).

Reversionary interest of wife cannot be reduced into possession by release of prior interest.

So long as the interest of a wife in personal property is of a reversionary nature, it is incapable of being reduced into possession, and therefore cannot be affected by any act of the husband so as to bind the wife surviving; and where a wife has a present life interest in a fund, that portion of the life interest which will remain to her after her husband's death, if she survives him, is reversionary within the meaning of the rule, and cannot be disposed of by the husband (*x*). It has been sometimes attempted to evade this rule and to bring the reversionary interest of the wife into the possession and control of the husband by obtaining a surrender or release of the prior interest; but it has been held that such a scheme is ineffectual. Thus, where a fund in Court was subject to a trust for a husband for life, remainder to his wife for life, remainder to their son absolutely. The husband and son by deed surrendered and released their respective interests to the wife for the purpose of giving her a present absolute interest in the fund; a petition by the three for payment of the fund to the son was refused on the ground that a court of equity will not establish an equitable merger by analogy to law, where the effect would be to defeat its own rules and practice in the protection of married women from the marital control (*y*).

But may be disposed of, except in certain cases, by husband

But the husband and wife may together, by a deed acknowledged by the latter, dispose of a reversionary interest in money charged on land, or in money to

(*u*) Burnham *v.* Bennett, 2 Coll. C. C. 254.

(*x*) Stiffe *v.* Everitt, 1 My. & Cr. 37. See also Bolito *v.* Kinniar, 11 Jur. N. S. 556.

(*y*) Whittle *v.* Henning, 2 Ph. 731.

arise from the sale of land impressed with a trust for sale (*z*), and also of a reversionary interest in any personal estate to which the wife has become entitled under any instrument made after the 31st of December, 1857 (except such interest in personal estate as may have been settled on her by any settlement, or agreement for a settlement, made on the occasion of her marriage, and except also any interest which by the terms of the instrument she is restrained from alienating), and may also release or extinguish any power vested in her in regard to any such personal estate (*a*).

and wife together by deed acknowledged by latter.

The marriage before the recent Act of a female joint tenant severs the joint tenancy as regards any property which, by the mere act of marriage, vests in the husband, *i.e.*, personal chattels in possession, but not as regards chattels real or choses in action (*b*).

Marriage, when a severance of joint tenancy.

III. *The wife's equity to a settlement in respect of property accruing to her during the coverture not subject to the above-mentioned Acts.*

A chose in action of the wife, not being her separate property under the above-mentioned Acts or otherwise, may be paid or transferred to the husband, or to his assignee, or to trustees for his benefit (*c*), by the trustee or other person in whose hands or name it is, at any time before proceedings have been instituted for a settlement; but should such trustee or other person refuse to pay it over, the Court will, in an action by the husband to recover it, oblige him to make a reasonable provision thereout for his wife and children (*d*). This right of the wife is called "her equity to a settle-

Equity to a settlement, what it is.

(*z*) 3 & 4 Will. 4, c. 74.
(*a*) 20 & 21 Vict. c. 57.
(*b*) *In re* Butler's Trust, 38 C. D. 286.
(*c*) Hansen *v.* Miller, 8 Jur. 209.
(*d*) Elibank *v.* Montolieu, 5 Ves. 737; Vaughan *v.* Buck, 1 Sim. N. S. 284.

ment." And the wife may herself take proceedings to assert this equity.

Amount to be settled depends upon circumstances.

The general rule is to settle one half on the wife, and to pay the other half to the husband or his assignees, but under special circumstances, *e.g.*, where the husband has been guilty of desertion, or adultery, or cruelty, or aggravated misconduct towards his wife, or where he is insolvent, or where the fund is very small, the Court has settled the whole fund (*e*). And in other cases, where ample provision has been already made for the wife and children, the Court has declined to order any settlement (*f*). And any fraudulent conduct on the part of the wife towards an assignee of the fund will be taken into consideration by the Court as raising an equity against her (*g*).

Release of equity to a settlement.

Under 20 & 21 Vict. c. 57, a wife may by deed acknowledged under the Fines and Recoveries Act, with the concurrence of her husband, release or extinguish her right or equity to a settlement out of any personal estate to which she, or her husband in her right, may be entitled in possession under any instrument made after the 31st of December, 1857. It will be remarked that the Act makes no provision for enabling the wife to release her equity to a settlement out of personal estate derived under an *intestacy*.

Except in cases coming within the operation of the last-mentioned Act, the wife cannot deprive herself of her equity to a settlement otherwise than by examination in Court. Hence, a trustee having in his hands money belonging absolutely to a married woman, although he may safely pay it to the husband, is not bound to do so even at the wife's request, but may pay it into Court under the Trustee Relief Act, so as to enable the wife to assert her equity to a settlement (*h*).

(*e*) *In re* Cutler, 14 Beav. 220; *In re* Kincaid, 1 Drew. 326; Gent *v.* Harris, 10 Hare, 383; Duncombe *v.* Greenacre, 29 Beav. 578; *In re* Suggitt's Trusts, L. R. 3 Ch. 215; Reid *v.* Reid, 33 C. D. 220.

(*f*) Aguilar *v.* Aguilar, 5 Madd. 414; Spicer *v.* Spicer, 24 Beav. 365; *Re* Erskine's Trust, 1 K. & J. 302.

(*g*) *In re* Lush's Trusts, L. R. 4 Ch. 591; Roberts *v.* Cooper, (1891) 2 Ch. 235.

(*h*) *Re* Swan, 2 H. & M. 34.

Equity to a settlement does not attach to a reversionary interest.

The wife's equity to a settlement is an obligation fastened by the Court not upon the property, but on the right to receive it, and it is only when the property comes to be payable or transferable that the obligation will be enforced. A settlement, therefore, cannot be claimed in respect of a reversionary interest so long as it remains reversionary (*i*).

Wife's right to a settlement notwithstanding she may be living separate.

The wife is entitled to this equity to a settlement, although she may be living separate from her husband (*k*).

Again, this equity to a settlement exists as against her husband's assignees for a valuable consideration, and all other assignees, and also as against his creditors (*l*).

Equity, how far it attaches to life interests.

The wife has also an equity to a settlement in respect of a life interest in real or personal property, as against the trustee in bankruptcy of the husband (*m*), or as against the husband himself (*n*), but not as against a particular assignee for value of such life interest (*o*).

Settlement made by husband in consideration of wife's fortune, bars her right.

If, previously to marriage, the husband makes a settlement on his wife in consideration of her fortune, he would be entitled to the absolute possession of the equitable personalty of which she was then possessed (*p*). And if the settlement is made in consideration of the future as well as the present fortune of the wife, the title of the husband in respect of all her property would be good as against the wife's right to a settlement (*q*).

Cannot be enforced by children.

If the wife dies before the husband, her children cannot enforce an equity for a settlement after her death, unless a decree for this purpose has been made

(*i*) Osborn *v.* Morgan, 9 Hare, 432; Adams *v.* Bennett, 23 L. T. 183.

(*k*) Eedes *v.* Eedes, 11 Sim. 569.

(*l*) Johnson *v.* Johnson, 1 Jac. & W. 476; Scott *v.* Spashett, 3 Mac. & Gor. 599; Marshall *v.* Fowler, 16 Beav. 249.

(*m*) Lumb *v.* Milnes, 5 Ves. 517; Sturgis *v.* Champneys, 5 M. & C. 97; Barnes *v.* Robinson, 9 Jur. N. S. 245; Taunton *v.* Morris, 11 Ch. D. 779.

(*n*) Gilchrist *v.* Cator, 1 De G. & Sim. 188; *In re* Ford, 33 L. J. Ch. 180; Gleaves *v.* Prime, 11 W. Rep. 273.

(*o*) Tidd *v.* Lister, 10 Hare, 140; Elliot *v.* Cordell, 5 Madd. 149: *Re* Carr's Trusts, L. R. 12 Eq. 609.

(*p*) Druce *v.* Denison, 6 Ves. 395.

(*q*) Garforth *v.* Bradley, 2 Ves. sen. 675.

in her lifetime (*r*). And this is the case even if the wife commences an action in her lifetime, but dies before a decree (*s*).

The proper form of a settlement is for the wife for life, and then for her children by any marriage as she shall appoint by deed or will, and in default of such appointment, for her children by any marriage who being sons attain twenty-one, or being daughters attain that age or marry, with usual clauses, and if no child, for the husband, whether he survives the wife or not (*t*).

IV. *Trusts for the separate use of a married woman, either with or without a restraint on anticipation.*

What was necessary before recent Act to constitute a trust for separate use.

Independently of the Married Women's Property Acts, equity has always recognized the right of a married woman to the separate enjoyment of property, where it has been given upon a trust for her separate use, or where the language of the instrument of gift has shown the intention of the donor to be that she shall enjoy it independently of her husband. Thus, a bequest of stock to trustees in trust to permit a married woman to receive the income "independent of her husband" (*u*); a bequest of residue to a married woman and her unmarried daughter in equal shares for their own use and benefit, "independently of any other person" (*x*); a gift of a legacy to a married woman "for her own use and at her own disposal" (*y*); a bequest to trustees in trust to pay the income to a married woman, for life, "her receipt to be a sufficient discharge" (*z*); a bequest of bonds and mortgages to a

Cases where gift has been held to confer separate estate.

(*r*) Scriven *v.* Tapley, 2 Ed. 337; Murray *v.* Lord Elibank, 10 Ves. 84; De la Garde *v.* Lempriere, 6 Beav. 344.

(*s*) Wallace *v.* Auldjo, 2 Drew. & Sm. 216; 1 De G. J. & S. 643.

(*t*) Spirett *v.* Willows, L. R. 4 Ch. 407; Croxton *v.* May, *ib.* 9 Eq. 404; Walsh *v.* Wason, *ib.* 8 Ch. 482; Oliver *v.* Oliver, 10 C. D. 765.

(*u*) Wagstaff *v.* Smith, 9 Ves. 520.

(*x*) Margetts *v.* Barringer, 7 Sim. 482.

(*y*) Prichard *v.* Ames, T. & R. 222.

(*z*) Lee *v.* Prieaux, 3 B. C. C. 381.

married woman, with a direction that they should be delivered up to her "whenever she should demand or require the same" (*a*); and a bequest to a husband "for the livelihood of his wife" (*b*), have been held to confer a separate estate.

Cases where the contrary has been held.

But a direction to pay the capital or income to a wife "into her own proper hands for her own use and benefit" (*c*), or "to her own use and benefit" (*d*), or to her absolute use (*e*), or the words, "to be under her sole control" (*f*), or a bequest to a female and her assigns for her life for her and their own absolute use and benefit (*g*), have been held insufficient to create a trust for a wife's separate use. And in a case where a testator devised lands to his wife "for her sole use and benefit" without the intervention of a trustee, it was held that she did not take a separate estate (*h*). This case has been followed by the House of Lords (*i*), and it may now be considered settled that the word "sole" has not acquired a technical meaning, and will not be construed as equivalent to "separate," unless the context shows such to have been the intention (*k*).

Where a legacy was bequeathed to trustees for the support and maintenance of the wife of A., and for the support and education of A.'s children, and there were no children of A. at the testator's death, it was held that the wife took the legacy for her separate use (*l*). And where a legacy was by will directed to be applied to the separate use of a wife, a further annuity, which was given to her by codicil in addition, was held to be for her separate use (*m*).

A direction by will to purchase an annuity for the

(*a*) Dixon *v.* Olmius, 2 Cox, 414.
(*b*) Darley *v.* Darley, 3 Atk. 399.
(*c*) Tyler *v.* Lake, 2 Russ. & My. 183; Blacklow *v.* Laws, 2 Hare, 49.
(*d*) Johnes *v.* Lockhart, cited 3 Bro. C. C. 385, note.
(*e*) *Ex parte* Abbott, 1 Deac. 338.
(*f*) Massey *v.* Parker, 2 M. & K. 174.
(*g*) Rycroft *v.* Christie, 3 Beav. 238.
(*h*) Gilbert *v.* Lewis, 1 De G. J. & S. 38. Westbury, L. C., in giving judgment, referred to Adamson *v.* Armitage as a case of doubtful authority, and to Cox *v.* Lyne as very erroneously reported. See also Lewis *v.* Matthews, 2 L. R. Eq. 177.
(*i*) Massy *v.* Room, L. R. 4 H. L. 288.
(*k*) *Re* Tarsey's Trust, L. R. 1 Eq. 561.
(*l*) Cape *v.* Cape, 2 Y. & C. Eq. Exch. 543.
(*m*) Day *v.* Croft, 4 Beav. 561.

wife in her name, and to pay the same to her and her assigns, does not, except under the recent Act, confer upon her a separate estate in the annuity (*n*).

So also a settlement of personalty on the wife for life for her separate use, with remainders over, with the ultimate remainder to her executors, administrators, and assigns, does not, except under the recent Act, create a trust for her separate use as to the ultimate remainder (*o*).

Separate estate may be disposed of by wife.

Independently of the Married Women's Property Act, 1882, all property, whether real or personal, held in trust for the separate use of a married woman, whether for an estate in fee simple (*p*), or for any other estate or interest (*q*), can be disposed of by her independently of her husband, in all respects as if she were a *feme sole*, and the deed of disposition need not be acknowledged.

If legal estate in land given to separate use of wife is vested in her, she can convey under Vendor and Purchaser Act, *semble*.

If in a case not within the Act of 1882, land has been given to a married woman in fee simple for her separate use so that she has the legal estate as well as the equitable separate estate, it is apprehended that upon a sale or mortgage she will be able, under sect. 6 of the Vendor and Purchaser Act, 1874, to convey the legal estate to the purchaser or mortgagee by an unacknowledged deed. The contract and payment of the consideration money will constitute her a bare trustee for the purchaser or mortgagee, and thus bring her within the operation of the section (*r*).

Restraint on anticipation.

A trust of the rents or income of real or personal property for the separate use of a married woman, has been usually accompanied by a clause in the nature of a restraint on anticipation, in which case her power is restricted to that of receiving the income as it becomes due, and she is absolutely incompetent to make any disposition of the rents or income before they accrue

(*n*) Dakins *v.* Beresford, 1 Cha. Ca. 194.

(*o*) D'Arcy *v.* Crofts, 9 Ir. Ch. Rep. 19.

(*p*) Taylor *v.* Meads, 4 D. J. & S. 597.

(*q*) Stead *v.* Nelson, 2 Beav. 245; Major *v.* Lansley, 3 Russ. & My. 357; Newcomen *v.* Hassard, 4 Ir. Ch. Rep. 268, 273.

(*r*) See *In re* Docwra, 29 C. D. 693.

due, and until lately she could not give a valid power of attorney to receive them (*s*), nor could the Court release the restriction, although it would be clearly for her benefit so to do (*t*). But it is now provided by the Conveyancing Act, 1881, that, notwithstanding that a married woman is restrained from anticipation, the Court may, if it thinks fit, where it appears to the Court to be for her benefit, by judgment or order, with her consent, bind her interest in any property (*u*), and the Act also empowers a married woman by deed to appoint an attorney for the purpose of executing any deed or doing any act which she herself might do (*x*).

Interest of a married woman may be bound by Court, notwithstanding restraint on anticipation, and she may appoint attorney.

The power given to the Court by the Act of dispensing with a restraint on anticipation will be exercised with great caution, and the Court refused in a recent case to exercise it where the object was to give effect to an arrangement whereby the married woman who was tenant for life would acquire a benefit at the expense of the *cestuis que trust* in remainder (*y*).

Power given to Court exercised with great caution.

A direction that the income shall be paid from time to time into the proper hands of the wife will not amount to a restraint on anticipation (*z*). So in a case (*a*) where stock was covenanted to be transferred to trustees to pay the dividends to such persons, and in such proportions as the wife, during her coverture, should, notwithstanding her coverture, by any note or writing under her hand appoint, and, in default of appointment, into her proper hands, the Court decreed a transfer of the fund to the husband with the wife's consent. Again, where a testator devised an estate to trustees in trust to pay the rents, &c., for the separate use of his wife for her life, and to pay the same as the same should become due and payable into her hands, and not otherwise, and he declared that her receipt

What amounts to a restraint on anticipation.

(*s*) Kenrick *v.* Wood, L. R. 2 Eq. 333.

(*t*) Robinson *v.* Wheelwright, 21 Beav. 214; 6 De G. M. & G. 535. See Wilton *v.* Hill, 25 L. J. Ch. 156.

(*u*) Sect. 39.

(*x*) Sect. 40.

(*y*) *In re* Little, 40 C. D. 418.

(*z*) Parkes *v.* White, 11 Ves. 221.

(*a*) Clarke *v.* Pistor, cited 3 Bro. C. C. 568.

alone for what should be actually paid into her own proper hands for such rents should be a good and sufficient discharge to the trustees; these words were held not to amount to a restraint on alienation (*b*).

On the other hand, a direction that the receipt of the wife for the annual income *after it shall have become due*, shall be a sufficient discharge (*c*); or that the receipt of the wife alone, or of some person authorized by her to receive payment of the income after such *shall have become due*, shall be a sufficient discharge (*d*), has been held sufficient to restrain her from anticipating the income. The question to be considered in cases of this kind is, whether the words used are used for the purpose of unfolding what is implied in the gift to the separate use, or for the more extended purpose of modifying and controlling the gift (*e*). Again, where property was limited for the whole and sole separate use of a married woman, and not to be sold or mortgaged, it was held that an intention to restrain anticipation was sufficiently indicated (*f*). So where lands were devised to the use of E., the rents of which she was to receive from the tenants herself while she lived, whether married or single, followed by a declaration that no sale or mortgage should take place during the life of E., it was held that E. was entitled for her separate use, without power of anticipation (*g*).

Restraint on anticipation may be annexed to corpus as well as income.

A restraint on anticipation may be annexed not only to a trust of income, but also to a limitation of the fee simple of land, or to an absolute gift of consols or other personal property. The result of the cases on this subject may be thus stated: (1) If a legacy or share of residue is given to a married woman, or a trustee for her, "for her separate use without power of anticipation," without any direction as to the payment or transfer of it to her, the testator will be supposed to

(*b*) Acton *v.* White, 1 Sim. & Stu. 429.

(*c*) Field *v.* Evans, 15 Sim. 375.

(*d*) Baker *v.* Bradley, 7 De G. M. & G. 597.

(*e*) *Per* Turner, L. J., in Baker *v.* Bradley, 7 De G. M. & G. 623.

(*f*) Steedman *v.* Poole, 6 Ha. 193.

(*g*) Goulder *v.* Camm, 1 De G. F. & J. 146. See also Sockett *v.* Wray, 4 Bro. C. C. 483; *In re* Young's Settlement, 18 Beav. 199; Ross's Trust, 1 Sim. N. S. 196.

intend that the executor shall retain and invest the corpus, and pay the income to her, and the restraint will take effect (*h*). (2) If a legacy or share of residue is directed to be paid or transferred to a married woman "for her separate use without power of anticipation," such a direction negatives any right in the executor or trustee to retain the money, and the restraint on anticipation is repugnant and void (*i*). (3) If the gift is reversionary, the restraint on anticipation takes effect until it falls into possession; and whether it remains in force afterwards depends on whether the language of the will brings the case under (1) or (2) (*j*).

Can only be attached to a trust for separate use.

A restraint on anticipation is of no effect unless the income to which it applies is given to the married woman for her separate use (*k*).

Restraint on anticipation not affected by Act of 1882.

It is provided by the Married Women's Property Act, 1882, that nothing therein contained shall interfere with or render inoperative any restriction against anticipation attached or to be attached to the enjoyment of any property or income by a woman under any settlement, agreement for a settlement, will, or other instrument, but so that no restriction on anticipation contained in any settlement of a woman's own property by herself shall have any validity against debts contracted by her before marriage (*l*).

A gift for separate use without the intervention of trustees, makes husband a trustee until wife assents to the destruction of the separate trust.

Where money or other property has been given to the separate use of a wife without the intervention of trustees, and has been paid or transferred to the husband, the separate trust remains attached to it unless and until it is shown, or can be inferred from the circumstances, that she has assented to its being freed from that trust. Such an inference will be made if the husband, with the acquiescence of the wife, uses the

(*h*) Baggett *v.* Meux, 1 Ph. 627; *Re* Ellis's Trusts, L. R. 17 Eq. 409; *Re* Currey, 32 C. D. 361; *In re* Grey's Settlement, 34 C. D. 85, 712.

(*i*) *Re* Croughton's Trusts, 8 C. D. 460; *In re* Bown, 27 C. D. 411. This case disapproves of the distinction made in *Re* Clarke's Trusts, 21 C. D. 74, between cash and a fund producing income.

(*j*) *Re* Bown's Trusts, *ubi suprà*; *Re* Spencer, 30 C. D. 183; *In re* Tippett's Contract, 37 C. D. 444.

(*k*) Stogdon *v.* Lee, (1891) 1 Q. B. 661.

(*l*) Sect. 19.

money in trade or in his family expenditure (*n*). But in a case where a married woman to whom a legacy had been given, received from the executor a country cheque which she endorsed and handed over to her husband, whose bankers received it and by his direction placed the money to his deposit account, it was held on the evidence that the wife did not intend to give the cheque to her husband, and that it was still her separate estate (*o*).

Separate income of wife, how long it remains her separate property.

In like manner the separate income of a wife remains her separate property so long as it is retained in the hands of the trustees of the settlement, or is paid to her separate account at a bank, or to any person by her order and as her trustee, or if paid into her own hands remains under her separate control; and any stock or other property, including real estate (*p*), or personal chattels (*q*), purchased with the savings of her separate income, is also her separate property. But if the income is paid to the husband with the wife's acquiescence, a gift of such income from her to him will be presumed (*r*); and where the trust money is lent to the husband with the wife's consent, and he retains it for some time without paying interest, there will be a similar presumption as regards such interest (*s*).

Savings of separate income.

Payment of income to husband with wife's consent.

A trust of income for separate use attaches during each coverture, and is suspended during discoverture.

When property is given in trust to pay the income to a woman who is unmarried at the date of the gift for her separate use, either with or without a restraint on anticipation, the separate trust attaches upon her subsequent marriage. In like manner a similar trust in favour of a married woman who becomes a widow and then marries again, revives on her second mar-

(*n*) Gardner *v.* Gardner, 1 Giff. 129. It is apprehended that this inference is not affected by sect. 3 of the Married Women's Property Act, 1882, and that the money would, under the circumstances, be considered as given, not lent, to the husband.

(*o*) Green *v.* Carlill, 4 C. D. 882; *In re* Flamank, 40 C. D. 461.

(*p*) Darkin *v.* Darkin, 17 Beav. 578.

(*q*) Newlands *v.* Paynter, 4 M. & C. 408.

(*r*) Beresford *v.* Archbishop of Armagh, 13 Sim. 643; Arthur *v.* Arthur, 11 Ir. Eq. Rep. 511, 513; Caton *v.* Rideout, 1 M. & G. 599.

(*s*) Rowley *v.* Unwin, 2 K. & J. 139; *Ex parte* Green, 2 Deac. & Ch. 113.

riage(*t*), unless confined by the express terms of the instrument to the first coverture(*u*). In these cases the income which is received by the *cestui que trust* while discovert, or by any person on her behalf, from the trustees of the fund, becomes her absolute property, and if unspent at the time of her subsequent marriage would, under the law as it stood prior to the Act of 1882, have passed to the husband in his marital right(*x*). But if it should happen that any part of such income, although received by the trustees, has not been paid over by them to the *cestui que trust* or to any person on her behalf at the time of the marriage, the separate trust attaches to the money retained in the hands of the trustees(*y*).

So also a trust of corpus for separate use comes into operation on marriage.

So also a trust for separate use annexed to the corpus of property, whether real or personal, given to an unmarried woman who has afterwards married (before the recent Act) will have come into operation on the marriage, provided that she did no act while discovert to destroy the separate trust. Thus, in a case where a leasehold house and the furniture in it were given by will without the intervention of trustees to a single woman for her separate use, and she subsequently married, and after the marriage she and her husband took possession of the house and furniture, it was held that they retained their separate character, and were not liable to the husband's debt.(*z*).

What acts of the wife will put an end to the separate trust.

In order to keep alive the separate trust, the property must have remained in the same state until the marriage. Thus, where a sum of stock given by will to a single woman for her separate use without power of anticipation was at her request transferred into her name by the executors, and she sold it out and spent part of the money, and with the remainder bought some bank shares and Canada bonds, and then married (before the recent Act), the Court held that the bank

(*t*) Tullett *v.* Armstrong, 1 Beav. 1.; Scarborough *v.* Borman, 4 M. & C. 377.

(*u*) Moore *v.* Morris, 3 Jur. N. S. 552.

(*x*) Spicer *v.* Dawson, 26 L. J Ch. 704.

(*y*) Ashton *v.* Macdougall, 5 Beav. 56.

(*z*) Newlands *v.* Paynter, 4 M. & C. 408.

shares and Canada bonds belonged to her husband free from any trust(*a*). It seems to have been the opinion of the V.-C. in this case that the Act which destroyed the separate trust was not the transfer of the stock to the lady, but her sale of it, and that if the stock had remained in her name up to the marriage it would have been her separate property after that event.

Wife's right to furniture settled to separate use against husband's assignees.

When furniture belonging to the husband is by an ante nuptial settlement assigned to a trustee for the separate use of the wife, it will not pass to the trustee in bankruptcy of the husband as being in his order and disposition at the time of the bankruptcy (*b*), nor need the assignment be registered under the Bills of Sale Acts, marriage settlements being expressly excluded from the operation of those Acts (*c*). But a *post-nuptial* settlement is not within the exception, and must be registered (*d*). If registered, it will prevail against the husband's creditors, although the goods may be in his house at the time of his bankruptcy (*e*), subject, however, in case the settlement is voluntary, to the operation of sect. 47 of the Bankruptcy Act, 1883.

V. *The liability of the wife's separate property, and of the husband for her debts and engagements contracted during the coverture, and before the marriage, respectively.*

Before Act of 1882 a married woman might contract debts to be paid out of her separate property.

Previously to the Married Women's Property Act, 1882, a married woman could not enter into any contract on which she was liable to be personally sued (*f*), but if she had separate property, she might, as an incident of such property, contract debts and engage-

(*a*) Wright *v.* Wright, 2 J. & H. 647.
(*b*) Jarman *v.* Wolloton, 3 T. R. 618; Simmons *v.* Edwards, 16 M. & W. 838.
(*c*) Act of 1878, s. 4; Act of 1882, s. 3.
(*d*) Fowler *v.* Foster, 28 L. J. Q. B. 210.
(*e*) *Ex parte* Cox, 1 C. D. 302.
(*f*) Marshall *v.* Rutton, 8 T. R. 545.

ments to be paid and satisfied out of it, and the Court would enforce payment accordingly (*g*.) It was not necessary that the contract should refer in terms to the separate property; it was sufficient if an intention to charge it could be collected from the nature of the contract or from the circumstances. Thus bonds, bills, promissory notes, and other written obligations were enforced against the separate property, because these acts would otherwise be nugatory, and consequently an intention to charge would be presumed (*h*). With regard to mere general engagements, such as tradesmen's bills and claims of that nature, the question in each case depended on whether credit was given to the wife. Thus, if the wife was living separately from her husband the inference would generally be that the credit was given to her, though if they were living together, it would be more reasonable to suppose that she intended her husband to pay (*i*).

General engagements.

It is now provided by the Married Women's Property Act, 1882, that a married woman shall be capable of entering into, and rendering herself liable in respect of, and to the extent of her separate property, on any contract, and of suing and being sued, either in contract or in tort, or otherwise, and any damages or costs recovered by her in any such action or proceeding shall be her separate property; and any damages or costs recovered against her in any such action or proceeding shall be payable out of her separate property, and not otherwise. And it is also provided that every contract entered into by a married woman shall be deemed to be a contract entered into by her with respect to and to bind her separate property unless the contrary be shown (*k*).

By Act of 1882 wife rendered capable of incurring debts and liabilities and of suing and being sued in respect of her separate property

Before the Act, a wife might contract with her husband in respect of her separate estate, and the husband could sue her in equity on any such contract.

(*g*) Standford *v.* Marshall, 2 Atk. 69; Hulme *v.* Tenant, 1 B. C. C. 15; Heatley *v.* Thomas, 15 Ves. 596; Bullpin *v.* Clarke, 17 Ves. 365; Murray *v.* Barlee, 3 M. & K. 209; Johnson *v.* Gallagher, 3 De G. F. & J. 494.

(*h*) Murray *v.* Barlee, 3 M. & K. 209.

(*i*) Johnson *v.* Gallagher, *ubi supra*.

(*k*) Sect. 1, sub-ss. 2, 3.

This right of the husband is not taken away by the Act, and he may now maintain an action against his wife, and recover out of any property made her separate property by the Act any money advanced by him to her since the marriage (*l*).

General engagements do not prevent subsequent alienation of separate property.

Before the Act it was held that the general engagements of a married woman were enforceable against the separate estate belonging to her at the time of the contract, if and so far as the same remained vested in her at the date of the judgment, and did not prevent an intermediate alienation (*m*). It is conceived that the law is the same as regards general engagements entered into since the Act.

General engagements could not before the Act be enforced against separate property subsequently acquired, but they may now.

It was held before the Act that the general engagements of a married woman could not be enforced against any separate estate acquired by her after the date of the contract (*n*). It is now provided that any contract entered into by a married woman with respect to and to bind her separate property shall bind not only the separate property which she was possessed of or entitled to at the date of the contract, but also all separate property which she may afterwards acquire (*o*). It has been held that this enactment only applies where the married woman has some existing separate property at the date of the contract (*p*).

Whether an appointment by will of a married woman makes property liable to her engagements.

An appointment by a married woman by will under a general power of appointment by deed or will or by will only, does not make the appointed property liable to engagements entered into by her on the credit of her separate estate before the 1st January, 1883, and it is doubtful whether it has this effect as regards engagements entered into after that date (*q*).

Position of husband where wife executrix before recent Act.

The husband being answerable for his wife's acts, she could not before the recent Act undertake the office of executrix without his consent, nor give discharges for payments made to her in that character. The

(*l*) Butler *v.* Butler, 16 Q. B. D. 374.

(*m*) Picard *v.* Hine, 5 Ch. 274; Pike *v.* Fitzgibbon, 17 C. D. 454.

(*n*) Pike *v.* Fitzgibbon, *ubi supra*; King *v.* Lucas, 23 C. D. 712.

(*o*) Sect. 1, sub-s. 4. This is not retrospective. Turnbull *v.* Forman, 15 Q. B. D. 234.

(*p*) *In re* Shakespear, 30 C. D. 169.

(*q*) *In re* Roper, 39 C. D. 483.

husband in his marital right was entitled to dispose of the personal estate vested in his wife as executrix, or to give receipts for or release debts due to the testator's estate (*r*); and he was liable for assets received or *devastavits* committed by him or his wife during the coverture (*s*). But since the new Act, a wife may accept the office of trustee, executrix, or administratrix, and may convey, assign, and deal with the trust property, and otherwise act in the trust as if she were a *feme sole*, and she will be liable in respect and to the extent of her separate property for all breaches of trust and *devastavits*, and her husband will (it is apprehended) have no right to intermeddle, and will be free from all liability for his wife's acts (*t*).

Married woman can now be trustee and executrix, and liable as such.

Whether a wife has or has not separate property, her husband is not liable for debts contracted by her during the marriage, unless he has given her authority to pledge his credit. Whether she has such an authority is a question of fact or reasonable presumption to be determined in each case according to the circumstances. While they live together, it will be presumed, in the absence of evidence to the contrary, that he has authorized her to give orders to tradesmen for such things as fall within the domestic department ordinarily entrusted to the wife's management, *e. g.*, the supply of provisions for the house, clothing for the members of the family, and things of that sort (*u*). The presumption may be rebutted by evidence that he has supplied her with sufficient money to buy the necessary articles, and has expressly ordered her not to get them on credit, subject, however, to the qualification, that if he has up to the time of giving such order acted in such a manner as to lead tradesmen to suppose that the authority exists, he would be bound to inform them of its withdrawal (*x*).

Husband not liable for wife's debts contracted after marriage, unless he has given her authority.

Authority is a question of fact or reasonable presumption according to circumstances.

(*r*) Williams on Executors, pt. 3. bk. 1, ch. 4; Thrustout *v.* Coppin, 2 W. Bl. 800.
(*s*) Smith *v.* Smith, 21 Beav. 385.
(*t*) Sects. 18, 24.
(*u*) Philipson *v.* Hayter, 6 C. P. 38.
(*x*) Jolly *v.* Rees, 33 L. J. C. P. 177; Debenham *v.* Mellon, 6 App. Cas. 24. The law as above stated is not altered by the recent Act.

No presumption if living separate, except as a matter of necessity.

If the husband and wife are living separately, the wife has no authority to pledge her husband's credit, except as a matter of necessity, as where she has been deserted or forced to leave her home, and she has no sufficient means of her own. If they separate by mutual consent, there is no implied authority, so long as he makes her an adequate allowance, and duly pays it (*y*).

Right of person who has advanced money to wife for necessaries.

It has been held that a person advancing money to a married woman who has been deserted by her husband, which money has been laid out in necessaries for her, is in a court of equity entitled to stand in the place of the persons who actually supplied those necessaries, and to recover the money from the husband (*z*).

Before Act of 1870, husband was liable for his wife's debts contracted before marriage.

Until the passing of the Married Women's Property Act, 1870, a husband was liable to all his wife's debts contracted before marriage, on the principle that as he took her property so he ought to take her liabilities. The husband and wife had to be sued jointly, and if no action was brought during the coverture, and the wife survived, her liability revived; but if the husband survived, his liability ceased (*a*). In a late case (*b*), it was held that property settled by a woman on her marriage for her separate use was liable, after her husband's bankruptcy, for debts contracted by her before marriage.

Act of 1870 makes wife liable in respect of her separate property and husband not liable.

By the Married Women's Property Act, 1870, it was provided (*c*) that a husband should not, by reason of any marriage which should take place after it came into operation (on 9th August, 1870), be liable for the debts of his wife contracted *before* marriage, but the wife should be liable to be sued for, and any property belonging to her for her separate use should be liable to satisfy such debts as if she had continued unmarried (*d*). The effect of this enactment was that if a

(*y*) Johnson *v.* Sumner, 27 L. J. Exch. 341; Biffin *v.* Bignell, 31 L. J. Ex. 189; Eastland *v.* Burchell, 3 Q. B. D. 432.

(*z*) Jenner *v.* Morris, 1 D. & S. 218; 3 De G. F. & J. 45; Deare *v.* Soutten, L. R. 9 Eq. 151.

(*a*) Heard *v.* Stamford, 3 P. W. 409.

(*b*) Chubb *v.* Stretch, L. R. 9 Eq. 555.

(*c*) Sect. 12.

(*d*) This extends to property settled to the separate use of the

woman possessed of property, and owing debts, married without a settlement, so that her property passed to her husband, her creditors were without remedy. The Act deprived them of the right to sue the husband, and it would have been of no use to sue the wife, as she would have no property to meet the demand.

Amendment Act of 1874 revives husband's liability to extent of assets acquired from wife.

This defect was remedied by the Married Women's Property Act Amendment Act, 1874(*e*), which repeals, so far as respects marriages after the 30th July, 1874, so much of the Act of 1870 as enacted that a husband should not be liable for the debts of his wife contracted before marriage, and substitutes other provisions, making the husband liable in a joint action brought against both to the extent only of the assets therein specified, being in effect all property acquired by him in his wife's right, or which he might with reasonable diligence have so acquired.

Provision of Act of 1882 as to liability of wife for her ante-nuptial debts,

The Acts of 1870 and 1874 are, both of them, repealed by the Married Women's Property Act, 1882, by which last-mentioned Act it is provided that a woman after her marriage shall continue to be liable in respect and to the extent of her separate property for all debts contracted and all contracts entered into, or wrongs committed by her before her marriage, including any sum for which she may be liable as a contributory under the Act relating to joint-stock companies, and that all sums recovered against her in respect thereof as for costs, shall be payable out of her separate property, and that between her and her husband, unless there be any contract between them to the contrary, her separate property shall be primarily liable for all such debts, contracts, or wrongs, and all damages and costs recovered in respect thereof(*f*). But this provision is not to increase or decrease the liability of any woman married before the commencement of the Act for any such debt, contract, or wrong

married woman without power of anticipation. Sanger *v.* Sanger, L. R. 11 Eq. 470; Axford *v.* Reid, 22 Q. B. D. 548; Jay *v.* Robinson, 25 Q. B. D. 467.

(*e*) 37 & 38 Vict. c. 50.

(*f*) Sect. 13.

as aforesaid, except as to any separate property to which she might become entitled by that Act, and to which she would not have been entitled under the Acts of 1870 and 1874, or otherwise, if that Act had not passed. And it is also provided that a husband shall be liable for the debts of his wife contracted, and all contracts entered into or wrongs committed by her before marriage, to the extent of all property of the wife acquired by him from or through her, but this provision is not to increase or diminish the liability of any husband incurred before the commencement of the Act.

and as to liability of husband for same.

On the death of the wife, the husband's liability for her debts ceases, if he was married before 1883(*g*), but if the marriage was after that date, it is apprehended that his liability, to the extent of property acquired by him from or through her, continues (*h*).

Husband's liability ceases on wife's death.

The Act of 1882 does not abolish the liability of the husband for his wife's wrongful acts during the coverture(*i*).

The contracts and engagements of a married woman cannot be enforced against income which she is restrained from anticipating, nor can she be made liable thereout, for the consequences of fraud committed by her(*k*), or be committed to prison, under sect. 5 of the Debtors Act, 1869, for non-payment of debt, when such income constitutes her only means of payment(*l*). But a restraint on anticipation contained in a marriage settlement of the wife's own property has no validity against debts contracted by her before marriage (*m*).

Restraint on anticipation a protection against post-nuptial, but not ante-nuptial debts.

The Act of 1882(*n*) provides that a married woman carrying on a trade separately from her husband, shall, in respect of her separate property, be subject to the bankruptcy laws as if she were a *feme sole*.

(*g*) Bell *v.* Stocker, 10 Q. B. D. 129.

(*h*) Sects. 14, 15.

(*i*) Seroka *v.* Kattenburg, 17 Q. B. D. 177.

(*k*) Jackson *v.* Hobhouse, 2 Mer. 483; Clive *v.* Carew, 1 J. & H. 199; Arnold *v.* Woodhams, 16 Eq. 30; Chapman *v.* Biggs, 11 Q. B. D. 27.

(*l*) Draycott *v.* Harrison, 17 Q. B. D. 147.

(*m*) See 45 & 46 Vict. c. 75, s. 19.

(*n*) 45 & 46 Vict. c. 75, s. 1, sub-s. 5.

It has been held that the expression "separate property" does not include property over which she has only a general power of appointment, and that she cannot be compelled to execute the power in favour of the trustee in bankruptcy(*o*).

VI. *The effect of desertion, or separation, as to the wife's property, and her capacity to contract.*

Deserted wife may now obtain order to protect earnings.

A woman deserted by her husband is empowered by the Matrimonial Causes Act, 1857(*p*), to apply to a magistrate, or to justices in Petty Sessions, or to the Divorce Court, for an order to protect "any money or property she may acquire by her own lawful industry, and property which she may become possessed of after such desertion, against her husband, or his creditors, or any person claiming under him." And such order places her in the same position as regards property and contracts, and suing and being sued, as if she had obtained a decree for judicial separation.

After judicial separation wife to be deemed a *feme sole* as to property, and for purposes of contract, and of suing and being sued;

By sect. 25 of the same Act it is provided that in every case of a judicial separation the wife shall from the date of the sentence and whilst the separation shall continue, be considered as a *feme sole* with respect to property of every description which she may acquire, or which may come to or devolve upon her; and such property may be disposed of by her in all respects as a *feme sole*, and on her decease the same shall, in case she shall die intestate, go as the same would have gone if her husband had been then dead; provided that if any such wife should again cohabit with her husband, all such property as she may be entitled to when such cohabitation shall take place shall be held to her separate use, subject, however, to any agreement in writing made between her husband and herself whilst separate. And (by sect. 26) that in every case of a judicial sepa-

(*o*) *Ex parte* Gilchrist, 17 Q. B. D. 521.

(*p*) 20 & 21 Vict. c. 85, s. 21. See also 21 & 22 Vict. c. 108, s. 6.

ration the wife shall, whilst so separated, be considered as a *feme sole*, for the purposes of contract, and wrongs and injuries, and suing and being sued in any civil proceeding, and her husband shall not be liable in respect of any engagement or contract she may have entered into, or for any wrongful act or omission by her, or for any costs she may incur as plaintiff or defendant, provided that where upon any such judicial separation alimony has been decreed or ordered to be paid to the wife, and the same shall not be duly paid by the husband, he shall be liable for necessaries supplied for her use, provided also that nothing shall prevent the wife from joining at any time during such separation in the exercise of any joint power given to herself and her husband (*q*).

and also as regards property belonging to her as executrix or trustee.

By the Matrimonial Causes Act, 1858 (*r*), it is declared that the provisions contained in that Act and in the Act of 1857 respecting the property of a wife who has obtained a decree for judicial separation, or an order for protection, shall be deemed to extend to property to which such wife has become or shall become entitled as executrix, administratrix, or trustee, since the sentence of separation or the commencement of the desertion (as the case may be); and the death of the testator or intestate shall be deemed to be the time when such wife became entitled as executrix or administratrix.

Cases to which protecting order has been held to apply.

In the case of a judicial separation, or of the wife obtaining a protection order, she is entitled absolutely not only to property given to her afterwards (*s*), but also to property which was reversionary or not reduced into possession before the separation or protection order, and which falls into possession, or she reduces into possession afterwards (*t*). But sect. 25 of the Act of 1857 does not apply to property belonging to the wife in possession at the date of the separation decree, and if she is entitled to income for her separate use

(*q*) Sect. 26.
(*r*) 21 & 22 Vict. c. 108, s. 7.
(*s*) *Re* Kingsley, 26 Beav. 85.
(*t*) *Re* Insole, L. R. 1 Eq. 470; Johnson *v.* Lander, *ib.* 7 Eq. 228; *Re* Coward and Adam's Purchase, *ib.* 20 Eq. 179; Nicholson *v.* Drury, &c. Compy., 7 C. D. 48.

without power of anticipation, the restraint on anticipation remains in force (*u*).

Protecting order should be general.

A protecting order should be in general terms, for the Court has no power to decide what title the wife has to specific property (*x*).

After divorce or judicial separation, Court may order settlement for benefit of innocent party and children.

By the Act of 1857, it is provided that in any case in which the Court shall pronounce a sentence of divorce or judicial separation for adultery of the wife, if it shall be made to appear to the Court that the wife was entitled to any property either in possession or reversion, it shall be lawful for the Court, if it should think proper, to order such settlement as it shall think reasonable to be made of such property, or any part thereof, for the benefit of the innocent party, and of the children of the marriage or either of them (*y*).

Before the passing of the Act of 1857, the Court had no jurisdiction to release a husband from the stipulations contained in his marriage settlement after a decree for dissolution of his marriage (*z*).

After (but not after judicial separation) Court may alter ante-nuptial or post-nuptial settlement.

By that Act, however, it is provided that the Court, after a final decree of nullity of marriage or dissolution of marriage, may inquire into the existence of ante-nuptial or post-nuptial settlements made on the parties, and may make such orders with reference to the application of the whole or a portion of the property settled either for the benefit of the children of the marriage, or of their respective parents, as to the Court shall seem fit (*a*).

It has been held that a separation deed is a post-nuptial settlement for the purpose of the last-mentioned enactment, and that the Court may, after a dissolution of the marriage, relieve a husband from a covenant in a separation deed (*b*). But this power cannot be exercised after a judicial separation (*c*).

(*u*) Waite *v.* Morland, 38 C. D. 135, virtually overruling Cooke *v.* Fuller, 26 Beav. 99.

(*x*) *Ex parte* Mullineux, 1 S. & T. 79; 27 L. J. Prob. 19.

(*y*) 20 & 21 Vict. c. 85, s. 45. See also 23 & 24 Vict. c. 144, s. 6.

(*z*) Evans *v.* Carrington, 6 Jur. N. S. 268; Bell *v.* Marquis of Anglesey, 1 S. & T. 655.

(*a*) 22 & 23 Vict. c. 61, s. 5.

(*b*) Worsley *v.* Worsley, L. R. 1 P. & M. 648; Bullock *v.* Bullock, 2 *ib.* 389. See also Morrall *v.* Morrall, 6 P. D. 98.

(*c*) Gandy *v.* Gandy, 7 P. D. 168.

Power of wife during transportation of husband.

If the husband abandon his country or is transported, it appears that during the period of such abandonment or transportation, and until his actual return, the wife may contract, pay, and receive money, or sue and be sued as a single woman (*d*).

Conviction of husband for assault on wife may have effect of judicial separation.

By the Matrimonial Causes Act, 1878 (*e*), it is provided that if a husband shall be convicted summarily or otherwise of an aggravated assault upon his wife, the Court or magistrate may, if satisfied that her future safety is in peril, order that the wife shall be no longer bound to cohabit with her husband, and such order is to have the force and effect of a decree of judicial separation on the ground of cruelty.

Court has power, in the event of a decree for restitution of conjugal rights not being complied with, to order a settlement.

By the Matrimonial Causes Act, 1884 (*f*), it is provided that in the event of a decree for the restitution of conjugal rights not being complied with, the Court may where the wife is the applicant, order the husband to make periodical payments to her, and if the husband is the applicant, and the wife is entitled to any property either in possession or reversion or in receipt of any profits of trade or earnings, the Court may order a settlement to be made for the benefit of the husband and the children or any of them, or may order part of the profits of trade or earnings to be paid periodically by the wife to the husband or to him or any other person for the benefit of the children.

It has been held that the Court cannot under the above mentioned Act order a settlement of property which is subject to a restraint on anticipation (*g*).

(*d*) 2 Bright's H. & W. 70.
(*e*) 41 Vict. c. 19, s. 4.
(*f*) 47 & 48 Vict. c. 68.
(*g*) Mitchell *v.* Mitchell, (1891) P. 208.

SETTLEMENTS.

Division of subject.

In this Dissertation it is proposed to consider— I. Settlements of personal estate. II. Settlements of real estate, the powers and liabilities of tenants for life and other limited owners of settled land as regards waste, leases, sales, exchanges, partitions, and improvements, and the provisions of the Settled Land Acts in reference to these and other matters. III. Miscellaneous points relating to settlements. IV. Voluntary dispositions, how far they are valid as against (1) subsequent purchasers, (2) creditors, and (3) the settlor himself and his representatives; and V. Stamps on Settlements.

I. *Settlements of personal estate.*

Trusts for payment of income during lives of husband and wife.

In settlements of personal estate made upon marriage, the first trusts (after providing for the investment of the trust funds) generally relate to the destination of the income during the lives of the husband and wife. When the property settled comes from the husband, the first life interest is, except under special circumstances, given to him. When, on the other hand, the wife makes the settlement, it is usual to give her the income during the coverture for her separate use, without power of anticipation, but the husband is sometimes permitted to receive the income of his wife's as well as of his own property, charged with the payment to the wife of an annual sum during the coverture, or even without such charge (*a*).

Observations on the question whether the wife or husband should have the first life interest in the wife's property.

(*a*) When the property settled by the wife is of moderate amount and the husband has means of his own, or is in a trade or profession, the arrangement by which the wife takes the whole income during the joint lives is a reasonable and convenient one, as it secures an inalienable provision for the family free from the husband's obligations. But if the wife's property is large the case is different, particularly if the husband has little or nothing, and is in no business or profession. It is not desirable, in the interest of either party, that the husband, on whom the law throws the burden of maintaining the family, should

Gifts over on alienation or bankruptcy, &c.

Sometimes it is desired, particularly if the husband is improvident, or is in embarrassed circumstances, or is engaged in a hazardous business, to make his life interest determinable on his bankruptcy, or on his attempting to alien or charge it. With regard to clauses of this description, the following points may be considered as settled:—

Cases in which such gifts over are valid.

1. That where the property settled comes from the wife, or from any other source than the husband himself, a gift over on the husband's bankruptcy or alienation is valid (*b*). And this is the case where the wife becomes entitled to money after the marriage, and she and her husband join in so settling it (*c*). 2. That where the property settled comes from the husband himself, such a gift over is invalid as against his trustee in bankruptcy (*d*), but good against his aliences (*e*), and also against an involuntary alienee by operation of law, *e. g.*, a judgment creditor (*f*). 3. That where the husband receives part of his wife's fortune on marriage and settles property of his own upon himself for life with a gift over on bankruptcy, &c., the wife will be considered as a purchaser of the property so settled to the extent of her fortune received by the husband, and consequently the gift over will to that extent be valid against the husband's trustee in bankruptcy (*g*). 4. That a mere condition annexed to the gift of a life interest that the donee shall not alien, unless followed

be entirely dependent on his wife for the means of doing so; and this is more especially the case where the property is a landed estate.

(*b*) Dommett *v.* Bedford, 3 Ves. 149; Lockyer *v.* Savage, 2 Stra. 947; *Ex parte* Hinton, 14 Ves. 598.

(*c*) Montefiore *v.* Behrens, 1 L. R. Eq. 171.

(*d*) Higinbotham *v.* Holme, 19 Ves. 88.

(*e*) Brooke *v.* Pearson, 27 Beav. 181; Knight *v.* Browne, 30 L. J. Ch. 649. In Phipps *v.* Lord Ennismore, 4 Russ. 131, a life estate was given to A. by marriage settlement, and by a separate deed executed at the same time he covenanted with the trustees that he would not alien or encumber his life estate, and that if he did, then the trustees should apply the rents for the benefit of A. and his wife and children, or any of them at their discretion. A. afterwards charged his life estate for valuable consideration in favour of persons who had no notice of the second deed, and it was held that the second deed was fraudulent and void as against them. The ground of this decision was, it is conceived, the covenant being contained in a separate and, as it were, secret deed.

(*f*) *In re* Detmold, 40 C. D. 585.

(*g*) Lester *v.* Garland, 5 Sim. 205. See also *Ex parte* Cooke, 8 Ves. 353; *Ex parte* Hodgson, 19 Ves. 206.

by a gift over, or unless the destination of the income during the rest of the life of the donee is in some way provided for by the instrument, will be inoperative(*h*). 5. That a clause forfeiting a life interest on the bankruptcy of the donee, though in terms referring to a future bankruptcy, takes effect, where the donee is an uncertificated bankrupt, at the date of the instrument of gift(*i*). 6. That if the bankruptcy is annulled before the life interest falls into possession, or before any payment has become due in respect thereof, there is no forfeiture (*k*), and this rule has been applied to an immediate life interest given by a will, where the annulment took place nine months after the testator's death, but before the assets were realized (*l*), and this rule has also been applied to a case where, before the life interest fell into possession, the bankrupt acquired property which, when sold, was sufficient to pay the debts in full, although there was no actual annulment of the bankruptcy until afterwards (*m*). But where there is a realized fund on which income has accrued, while the bankruptcy was in force, the fact that it is not actually paid over to the trustee in bankruptcy, or claimed by him before the annulment, does not, it is apprehended, prevent a forfeiture (*n*).

A life interest, subject to a gift over in case the donee shall assign, mortgage, or in any manner anticipate the income, is not forfeited by an involuntary alienation, *e. g.*, bankruptcy (*o*); but it is otherwise if the gift over is in case the donee shall "do or suffer,"

(*h*) Brandon *v.* Robinson, 18 Ves. 429. A proviso annexed to a trust to pay an annuity that the annuity shall cease upon alienation, &c., is valid and operative. In such a case there is in *effect* a gift over, as the annuity sinks into the property charged therewith, or out of which it is payable for the benefit of the persons entitled to such property. Dommett *v.* Bedford, 3 Ves. 149; Rochford *v.* Hackman, 9 Hare, 475, 481; Joel *v.* Mills, 3 K. & J. 458.

(*i*) Manning *v.* Chambers, 1 De G. & Sm. 282; Seymour *v.* Lucas, 1 Drew. & Sm. 177; *Re* Muggeridge's Trust, Johns. 625; Trappes *v.* Meredith, L. R. 7 Ch. App. 248.

(*k*) White *v.* Chitty, L. R. 1 Eq. 372; Trappes *v.* Meredith, *ib.* 9 Eq. 229.

(*l*) Lloyd *v.* Lloyd, 2 Eq. 722. See also Ancona *v.* Waddell, 10 C. D. 157.

(*m*) Metcalfe *v.* Metcalfe, 43 C. D. 633.

(*n*) *In re* Parnham's Trust, 13 Eq. 413; Samuel *v.* Samuel, 12 C. D. 152.

(*o*) Whitfield *v.* Prickett, 2 Keen, 608; Graham *v.* Lee, 23 Beav. 388.

or shall "do or permit" anything whereby the property shall be assigned or charged, &c. (*p*).

A gift over on alienation, &c., cannot be annexed to fee simple or absolute interest.

It will be borne in mind that a gift over on alienation, &c., cannot be annexed to a fee simple in land, or to an absolute interest in personal estate (*q*).

Trusts for issue after decease of husband and wife.

After the decease of both husband and wife, the ordinary trusts of a marriage settlement are for the children, or remoter issue of the marriage, as the husband and wife or the survivor shall appoint; and in default of appointment for the children equally, the shares of sons to vest at twenty-one, and the shares of daughters to vest at twenty-one or marriage, with a provision that any appointed share should be brought into hotchpot.

The advantage of extending the power to remoter issue is, that if a son to whom no share has been appointed, should die, leaving issue, the donees of the power are enabled to provide for such issue; and other cases may happen in which it may be desirable that grandchildren should be provided for, either by way of executory limitation after a life interest given to their father or mother, or without any such intermediate interest.

Maintenance clause unnecessary.

When the trusts for the children are in the usual form, an express provision for their maintenance while infants is unnecessary, having regard to sect. 43 of the Conveyancing Act, 1881 (*r*), which is as follows:—

(*p*) Roffey *v.* Bent, 3 Eq. 759; *Ex parte* Eyston, 7 C. D. 145.

(*q*) *Re* Dugdale, 38 C. D. 176; Corbett *v.* Corbett, 14 P. D. 7.

Observations on *In re* Jeffery.

(*r*) In the case of *In re* Jeffery, (1891) 1 Ch. 671, where a trust fund was directed to be held in trust for such children of three living persons as should attain twenty-one, so that the class was capable of increase, North, J., was of opinion that the income belonged to those children who were of age to the exclusion of those who were infants, and he therefore decided that sect. 43 of the Act did not enable the trustees to apply any part of the income for the maintenance of the latter. Whether the learned judge was right or wrong in his opinion as to the whole income going to the children, who were of age, in the case before him, and it is apprehended that he was wrong, the decision has no application to the ordinary trusts for children in a marriage settlement, under which it is clear that a child attaining twenty-one is entitled to the back income of his share, independently of sect. 43 of the Act. See *In re* Burton's Will, (1892) 2 Ch. 39, in which Chitty, J., dissented from the conclusion of North, J., in *In re* Jeffery.

(1.) Where any property is held by trustees in trust for an infant, either for life or for any greater interest, and whether absolutely, or contingently on his attaining the age of twenty-one years or on the occurrence of any event before his attaining that age, the trustees may, at their sole discretion, pay to the infant's parent or guardian, if any, or otherwise apply for or towards the infant's maintenance, education or benefit, the income of that property, or any part thereof, whether there is any other fund applicable to the same purpose, or any person bound by law to provide for the infant's maintenance or education, or not. Provisions in recent Act as to maintenance,

(2.) The trustees shall accumulate all the residue of that income in the way of compound interest by investing the same and the resulting income thereof from time to time on securities on which they are by the settlement, if any, or by law, authorized to invest trust money, and shall hold those accumulations for the benefit of the person who ultimately becomes entitled to the property from which the same arise; but so that the trustees may at any time, if they think fit, apply those accumulations, or any part thereof, as if the same were income arising in the then current year. and accumulation of surplus income.

The advancement clause, according to the usual form, enables the trustees to raise any part not exceeding one half of a child's vested or presumptive share, and apply it for his or her advancement, preferment, or benefit. It has been held that the word "benefit" has a more extensive application than "advancement" or "preferment," and authorizes the payment of debts incurred by the object of the power (*s*). And under this power, money can be raised for maintenance (*t*). Advancement clause.

If there are no issue of the marriage who live to attain a vested interest, it is usually provided that the trust property, if settled by the husband, shall revert to him, and if settled by the wife, shall revert to her, if she survives the coverture, but if not, shall go to her Ultimate trusts in default of issue.

(*s*) Lowther *v.* Bentinck, L. R. 19 Eq. 167.

(*t*) *Re* Breed's Will, 1 C. D. 226.

appointees by will, or in default of appointment, to her next of kin, under the Statutes of Distribution, as if she had died intestate and without having been married.

Possibility of divorce, how it affects form of alternate trusts.

It will be borne in mind, that as a marriage may now be dissolved otherwise than by the death of one of the parties, the alternative events to be provided for in the ultimate trusts of the wife's property are, not the wife surviving or dying in the lifetime of her husband, but the wife surviving, or dying during the continuance of the coverture. Otherwise, should the marriage be dissolved by a divorce, the wife, though the innocent party, would not, according to the terms of the deed, take an absolute interest in her property, unless she also survived her husband (*u*).

Construction of word "unmarried" in ultimate trust.

The ultimate trust, in default of appointment by will and in case the wife dies during the coverture, should be in favour of the persons who would have taken under the Statutes of Distribution if the wife had died intestate, *without having been married.* If the word "unmarried" is used, it will be construed to mean "without leaving a husband;" and, consequently, if it should happen that the wife dies, leaving the husband and one infant child, and such child subsequently dies an infant, the whole fund would go to the husband as the next of kin of such child (*x*).

Provision for settling after-acquired property.

A provision for bringing into settlement after-acquired property of the wife is frequently inserted. Since the Act of 1882, such a provision is no longer required in order to protect the property from the claims of the husband, but it will still be necessary where

(*u*) In Jessop *v.* Blake, 3 Giff. 639; Swift *v.* Wenman, L. R. 10 Eq. 15; Fussell *v.* Dowding, *ib.* 14 Eq. 421, it appears to have been held that a divorce on account of the husband's misconduct (there being no issue) had the effect of placing the parties in the same position as if the husband had died on the day of the divorce, and the fund was accordingly ordered to be paid to the wife, notwithstanding (in the two latter cases) that the settlement gave the husband a life interest in the event of his being the survivor. But these decisions have been disapproved of in Fitzgerald *v.* Chapman, 1 C. D. 563. See also Burton *v.* Sturgeon, 2 C. D. 318.

(*x*) Pratt *v.* Matthew, 8 De G. M. & G. 522; Clarke *v.* Colls, 9 Ho. of L. Ca. 601.

it is wished to secure it for the children of the marriage, or where it is thought for other reasons undesirable that the wife should have the absolute control over it.

With respect to the construction of provisions of this nature, the following points have been decided :—

Covenant to settle property to which wife or husband in her right becomes entitled during coverture does not include property vested in her at time of marriage;

1. That a covenant to settle all the property to which the wife shall become entitled during the coverture, does not include property in which the wife has at the time of the marriage a vested interest in possession (*y*). But if the words "or the husband in her right" are added, it has been held in some cases that property in possession is included, on the ground that the husband's acquisition of it by the act of marriage is an acquisition by him during the coverture (*z*). In other cases the contrary has been held (*a*). A covenant in the above form does not include property in which the wife has an estate in reversion which does not fall in until the coverture has determined (*b*).

unless being reversionary it falls into possession during coverture.

2. That a covenant in this form includes property to which the wife is at the date of the settlement entitled in reversion, whether for a vested or contingent interest, and which interest falls into possession during the coverture. The words "become entitled" import a change of condition, and when property in reversion becomes property in possession, its condition is changed sufficiently to satisfy the terms of the covenant (*c*).

In what cases it includes property accruing in reversion during coverture, and

3. That a covenant in this form extends to property to which the wife becomes entitled in reversion during the coverture, and which falls into possession after the coverture has determined, if the husband is the sur-

(*y*) Otter *v.* Melville, 2 De G. & Sm. 257; Hoare *v.* Hornby, 2 Yo. & Col. N. C. 121; Wilton *v.* Colvin, 3 Drew. 617; Archer *v.* Kelly, 1 Drew. & Sm. 300; Churchill *v.* Shepherd, 33 Beav. 107.

(*z*) Grafftey *v.* Humpage, 2 Beav. 46; James *v.* Durrant, 4 Beav. 177. See also Williams *v.* Mercier, 10 App. Ca. 1.

(*a*) Archer *v.* Kelly, Churchill *v.* Shepherd, *ubi supra.*

(*b*) *Re* Pedder's Settlement, L. R. 10 Eq. 585; *Re* Clinton's Trust, *ib.* 13 Eq. 295; *Re* Michell's Trusts, 9 C. D. 5; *Re* Jones' Will, 2 C. D. 362. *Re* Hughes' Trusts, 1 Giff. 432, and Viant's Settlement, L. R. 18 Eq. 436, must be considered as overruled.

(*c*) See Archer *v.* Kelly, *ubi supra;* Blythe *v.* Granville, 13 Sim. 190; *Ex parte* Blake, 16 Beav. 463.

falling into possession afterwards.

vivor (*a*); and the result is the same where the wife is the survivor, if she joins in the covenant (*e*).

Covenant extending to wife's property at time of marriage includes reversion falling into possession after coverture,

4. That if the covenant extends to property to which the wife is entitled at the date of the settlement or of the marriage, such a covenant will include property in which she has a reversionary interest at the time of the marriage (whether vested or contingent) but which does not fall into possession until the coverture has determined (*f*).

includes property given to wife's separate use, if she is covenantor,

5. That a provision for settling after-acquired property of the wife binds property given to her separate use, if it is in the form of a covenant by her (*g*), or of a general agreement between the parties, unless in the latter case the acts to be done for vesting the property in the trustees are to be done by the husband alone. Thus, if "it is hereby agreed and declared" that the property is to be conveyed to the trustees by the husband and wife (*h*), or by all proper parties (*i*), or shall be conveyed without saying by whom, in all these cases the wife and her separate property are bound (*k*); but if the agreement is merely that the husband shall convey, or join with the wife in conveying, &c., the husband only is bound (*l*). Where the covenant does not extend to money given to the wife's separate use, either by reason of its being expressly excepted, or of the wife not being bound by the covenant, and she, after 1882, acquires property which, but for sect. 5 of the Married Women's Property Act, would go to the husband in her right, such pro-

(*d*) Hughes *v.* Young, 9 Jur. N. S. 167; 32 L. J. Ch. 137.

(*e*) Butcher *v.* Butcher, 14 Beav. 222.

(*f*) Agar *v.* George, 2 C. D. 706.

(*g*) Coventry *v.* Coventry, 32 Beav. 612; *In re* Allnutt, 22 C. D. 275.

(*h*) Campbell *v.* Bainbridge, L. R. 6 Eq. 269.

(*i*) Butcher *v.* Butcher, *ubi supra;* Willoughby *v.* Middleton, 2 J. & H. 344.

(*k*) When the introductory words are "and it is hereby agreed and declared, and the husband hereby covenants," the latter words will not prevent the wife from being bound by the former ones. Butcher *v.* Butcher, and Willoughby *v.* Middleton, *ubi supra.*

(*l*) Travers *v.* Travers, 2 Beav. 179; Douglas *v.* Congreve, 1 Keen, 423; Grey *v.* Stuart, 2 Giff. 398; Ramsden *v.* Smith, 2 Drew. 298; Dawes *v.* Tredwell, 18 C. D. 354.

perty is, by virtue of sect. 19 of the Act, bound by the covenant (*m*).

6. That a covenant by the wife for settling after-acquired property does not extend to property of which she is tenant in tail (*n*), nor operate as an exercise of a general power of appointment or as a covenant to exercise such a power (*o*); but if the wife is herself entitled in default of appointment, it is apprehended that her interest will be bound, and that she cannot defeat the covenant by an appointment.

does not operate as exercise of power,

7. That such a covenant does not bind property which the wife is restrained from disposing of (*p*).

does not apply where wife is restrained from disposing,

8. That if the wife being an infant enters into a covenant to settle her after-acquired property, she must elect, on coming of age, whether she will perform such covenant, or compensate the persons disappointed by her refusal out of any interest given to her by the same instrument in her husband's property (*q*), unless by the terms of the instrument she is restrained from anticipating (*r*).

puts wife to election, if an infant,

9. That such a covenant is restricted to property acquired during coverture, although the words "during the coverture" are omitted, if the wife survives (*s*), but not if the husband survives (*t*).

does not include property acquired after coverture,

10. That where a person gives to a married woman who has entered into such a covenant an interest in property of such a nature as to come within its terms, any declaration of the donor's intention that the property shall not be affected by the covenant is inoperative (*u*).

declaration that covenant shall not apply inoperative.

(*m*) *Re* Stonor's Trusts, 24 C. D. 195; *Re* Whitaker, 34 C. D. 227; Hancock *v.* Hancock, 38 C. D. 718.

(*n*) Hilbers *v.* Parkinson, 25 C. D. 200.

(*o*) Ewart *v.* Ewart, 11 Hare, 276; Townshend *v.* Harrowby, 27 L. J. Ch. 553; Bower *v.* Smith, L. R. 11 Eq. 279.

(*p*) Coventry *v.* Coventry, *ubi supra;* Brooks *v.* Keith, 1 Dr. & Sm. 463; *In re* Currey, 32 C. D. 361.

(*q*) Codrington *v.* Lindsay, L. R. 8 Ch. 578.

(*r*) Smith *v.* Lucas, 18 C. D. 531; *Re* Vardon's Trusts, 31 C. D. 275.

(*s*) Dickinson *v.* Dillwyn, Carter *v.* Carter, L. R. 8 Eq. 546, 551; *Re* Edwards, L. R. 9 Ch. 97; *Re* Campbell's Policies, 6 C. D. 686.

(*t*) Fisher *v.* Shirley, 43 C. D. 290.

(*u*) Scholfield *v.* Spooner, 26 C. D. 94.

Covenant does not apply to legacy accruing under sect. 33 of Wills Act, *quære.*

It has been held by Vice-Chancellor Kindersley, that property bequeathed by a testator to his daughter who died in his lifetime, but whose husband and child survived him, and which property consequently came within the 33rd section of the Wills Act (*x*), was not subject to a covenant contained in the daughter's marriage settlement for settling her after-acquired property. His Honour thought that the fiction introduced by the 33rd section of the Wills Act was not to be extended further than was necessary to prevent a lapse (*y*).

Covenant by husband to settle his after-acquired property.

A covenant by a husband to settle his after-acquired property is unusual. In a case where a husband covenanted to settle property to which he should become entitled "by devise, payment, purchase, or otherwise," the covenant was held to include a policy effected by him on his life, as being acquired by purchase. Whether the covenant could be enforced as a general covenant to assign all the husband's property, was treated as doubtful, but the covenant was held divisible (*z*).

Power to wife to appoint to future husband and issue of future marriage.

When the property settled on the part of the wife is of considerable amount, it is desirable that a power should be reserved to her to appoint a portion of the trust funds in favour of a second husband, and the issue of a second marriage. In the absence of such a power, the wife may be left a widow by her first husband with only one child, and if she married again the whole of her fortune will go to the child of the first marriage, to the exclusion of the family, however large, of the second marriage. And the same observation applies sometimes as regards the property settled by the husband.

Sometimes the original trust is for children by any marriage.

Sometimes the object above referred to is attained by making the trust fund divisible under the terms of the original trust among the children of the wife or husband, as the case may be, by any marriage. If this is done, care should be taken to insert a power to

(*x*) 1 Vict. c. 26.
(*y*) Pearce *v.* Graham, 32 L. J. Ch. 359.
(*z*) *Re* Turcan, 40 C. D. 5.

the settlor to revoke, in case of there being a failure of issue of the first marriage.

II. *Settlements of real estate, the powers and liabilities of tenants for life and other limited owners of settled land as regards waste, leases, sales, exchanges, partitions, and improvements, and the provisions of the Settled Land Acts in reference to these and other matters.*

Conveyance of land in trust for sale and settlement of proceeds as personalty.

Where it is desired to settle land so that the children shall take equally, the proper mode of attaining that object is by conveying it to trustees in trust for sale, either at once, or after limitations to the husband and wife successively for life, and then settling the proceeds as personal estate, with a proviso that, until sale, the rents and profits shall be paid and applied in the same manner as the income of the proceeds would be applicable if a sale had been made.

What is a settlement of real estate, strictly so called.

Usual limitations in a settlement of real estate on marriage.

But a settlement of real estate strictly so called, is one by which the land is settled so as to confer an estate or estates for life, and estates by way of remainder in tail. The simplest form of such a settlement is where an owner in fee simple of land settles it on his marriage, the usual limitations in such a case being to the settlor for life with remainder to his first and other sons successively according to seniority in tail male, charged with an annual sum by way of jointure to the wife if she survives her husband, and with portions for the younger sons and daughters of the marriage.

Custom as to periodical re-settlement of an old family estate.

Usual limitations in a strict settlement of an old family estate.

In the case of an old family estate the custom is to resettle it every generation as the eldest son comes of age. The father and eldest son (whom we may call A. and B.), being respectively tenant for life in possession and tenant in tail in remainder, disentail the property and relimit it to uses under which A. takes back his life estate charged with an annual sum to B. during

their joint lives, with remainder to B. for life, with remainder to his first and other sons successively according to seniority in tail male, with similar remainders in favour of all the other sons then born of A. and their issue male, each son of A. taking in succession a life estate, with remainders to his first and other sons successively in tail male, with other remainders in default of A.'s issue male so framed as to keep the estate in the family as long as the law will permit. And powers are given to every tenant for life to jointure a wife and create charges of portions for his younger children, such charges to take effect after his own life estate.

Tenant for life with or without impeachment of waste.

It is usual in a settlement to add the words "without impeachment of waste" after the limitation of a life estate. It will be convenient, therefore, in this place to explain the powers and liabilities of a tenant for life as regards waste (1) when he is not made unimpeachable for waste, and (2) when he is.

Different kinds of waste.

Waste may be as regards buildings, trees, or mines. Waste as regards buildings has been already considered in the Dissertation on Leases.

Liability of tenant for life as regards timber.

A tenant for life, not made unimpeachable for waste, cannot cut timber of his own authority except for the ordinary reparation of buildings and fences, and any timber improperly cut down by him, or blown down by the wind, belongs to the owner of the first vested estate of inheritance (*a*). Nor can he cut young trees which, if allowed to grow, will become timber, unless such cutting is necessary for the growth of other timber in the same wood or plantation (*b*). But where there is on a settled estate timber ripe and fit for cutting, he may, under the Settled Land Act, 1882, cut and sell such timber with the consent of the trustees or under an order of the Court, and in that

(*a*) Bewick *v.* Whitfield, 3 P. Wms. 268. This is so, although there may be an intermediate estate limited to a person for life without impeachment of waste.

(*b*) Honywood *v.* Honywood, L. R. 18 Eq. 306.

case three-fourths of the net proceeds are to be set aside as capital money, and the other one-fourth goes as rents and profits (*c*).

What is timber.

Oak, ash, and elm are timber if twenty years old, and if not too old to have any useable wood in them (*d*). By special custom other trees may also be timber, as beech in Buckinghamshire.

Exception in case of a timber estate.

The rule preventing a tenant for life from cutting timber is subject to an exception in the case of a timber estate, *i. e.*, an estate which is cultivated for the produce of saleable timber, and where the timber is cut periodically in due course, the larger trees being removed to promote the growth of younger ones. Where such a usage exists on a particular estate, it is not waste for the tenant for life to comply with it, and the produce of the timber cut by him in due course belongs to him (*e*).

As to ornamental trees not being timber.

It is waste to destroy ornamental trees although not timber, or trees planted for the shelter of houses or banks, or fruit trees in a garden or orchard, or stools of underwood; but with these exceptions, a tenant for life may cut down trees which are neither timber nor likely to become timber, and the proceeds will belong to him (*f*).

Equitable waste.

Previously to the Judicature Act, 1873, a tenant for life "without impeachment of waste" had at law an unlimited power to commit waste, but a Court of Equity would not permit him to make an unconscionable use of the legal power, and would restrain him from such acts as the following, which were therefore termed equitable waste; viz., the pulling down of the mansion house or farm houses (*g*); cutting timber planted or left standing for ornament or shelter of the mansion house (*h*); destroying saplings or young trees not fit

(*c*) Sect. 35.

(*d*) Honywood *v.* Honywood, *ubi supra.*

(*e*) Honywood *v.* Honywood, *ubi supra;* Dashwood *v.* Magniac, (1891) 2 Ch. 306.

(*f*) Honywood *v.* Honywood, *ubi supra.*

(*g*) Aston *v.* Aston, 1 Ves. sen. 265.

(*h*) Rolt *v.* Lord Somerville, 2 Eq. Ca. Abr. 759.

to be cut for purposes of timber (*i*); cutting underwood of insufficient growth (*k*); or grubbing up a wood so as to destroy it altogether (*l*). Since the passing of the Judicature Act, 1873, a tenant for life without impeachment of waste has no legal power to commit equitable waste (*m*).

Practice of Court as to the cutting of ornamental timber when injurious to other trees.

The Court will, on the application of a tenant for life without impeachment of waste, order ornamental trees to be cut, if they injure or impede the growth of other trees which are of essential importance for ornament or shelter, and in that case the proceeds of the sale belong to him. And if he of his own authority cuts ornamental trees which the Court would have ordered to be cut, or if any ornamental timber is blown down, the proceeds belong to him (*n*).

Powers of a tenant in tail as regards waste.

A tenant in tail in possession has all the powers of a tenant in fee simple as regards waste, and this is the case even where the tenant in tail is prohibited by a special Act from barring the entail (*o*). A tenant in tail after possibility of issue extinct, and a tenant in fee with an executory devise over in the event of his dying without leaving issue, have respectively the same privileges as a tenant for life without impeachment of waste (*p*).

Powers of leasing, sale, &c., generally introduced into settlements before recent Acts.

Before the passing of the Settled Land Acts, it was usual and proper to insert in settlements of land powers enabling the tenant for life to grant leases, and enabling the trustees, on the request of the tenant for life, to sell and exchange, and, where the nature of the property required, to enfranchise copyholds held of a settled manor, and to make partitions. In the absence of such powers, it was necessary to apply to the Court whenever it was wished to lease for more than twenty-one years, or to sell or exchange, or make a partition.

(*i*) Chamberlayne *v.* Dummer, 1 B. C. C. 166.
(*k*) Brydges *v.* Stephens, 6 Madd. 279.
(*l*) Aston *v.* Aston, *ubi supra.*
(*m*) 36 & 37 Vict. c. 66, s. 25 (3).
(*n*) Baker *v.* Sebright, 13 C. D. 179.
(*o*) Att.-Gen. *v.* Duke of Marlborough, 3 Madd. 532.
(*p*) Williams *v.* Williams, 15 Ves. 428; Turner *v.* Wright, 2 D. F. & J. 234.

Powers given by Settled Land Acts to a tenant for life.

Under the Settled Land Acts (*q*), every tenant for life under a settlement may sell the settled land or any easement, right, or privilege of any kind over or in relation to the same, may enfranchise copyholds held of any settled manor, may make exchanges and partitions, may grant leases—in the case of a building lease, for ninety-nine years, of a mining lease for sixty years, and of any other lease for twenty-one years—may grant licences to copyholders to lease, and may raise money for equality of exchange or partition by mortgage, subject as to all these powers to the conditions prescribed by the Acts (*r*). But the principal mansion house, if any, on any settled land, and the pleasure ground and park and lands usually occupied therewith, cannot be sold, exchanged, or leased by the tenant for life without the consent of the trustees or an order of the Court (*s*).

How capital money arising under Act may be applied.

The moneys to arise on any sale, &c., and all other moneys coming within the description of capital money arising under the Act, are to be paid either to the trustees of the settlement or into Court at the option of the tenant for life (*t*), but there must be at least two trustees to receive it, unless the settlement authorizes the receipt of capital money by one (*u*). The money, when received, is to be invested or applied in some or one of the following modes, viz.:—(1.) in investment on Government securities, or on other securities on which the trustees of the settlement are by the settlement or by law authorized to invest trust money of the settlement, or on the security of the bonds, mortgages, or debentures, or in the purchase of the debenture stock, of any railway company in Great Britain or Ireland incorporated by special Act of Parliament, and having for ten years next before the date of the investment paid a dividend on its ordinary

(*q*) 45 & 46 Vict. c. 38 (Act of 1882); 47 & 48 Vict. c. 18 (Act of 1884); 50 & 51 Vict. c. 30 (Act of 1887); 52 & 53 Vict. c. 36 (Act of 1889); 53 & 54 Vict. c. 70 (Act of 1890).

(*r*) Act of 1882, ss. 3 to 20 inclusive; Act of 1889, s. 2; Act of 1890, ss. 7, 8, 9.

(*s*) Act of 1890, s. 10: see subsect. 3 for definition of mansion house.

(*t*) Act of 1882, s. 22.

(*u*) Sect. 39.

stock or shares, with power to vary the investment into or for any other such securities: (2) in discharge, purchase, or redemption of incumbrances affecting the inheritance of the settled land, or other the whole estate the subject of the settlement, or of land-tax, rent-charge in lieu of tithe, Crown rent, chief rent, or quit rent, charged on or payable out of the settled land: (3) in payment for any improvement authorized by the Act: (4) in payment of equality for exchange or partition of settled land: (5) in purchase of the seignory of any part of the settled land, being freehold land, or in purchase of the fee simple of any part of the settled land, being copyhold or customary land: (6) in purchase of the reversion or freehold in fee of any part of the settled land, being leasehold land held for years, or life, or years determinable on life: (7) in purchase of land in fee simple, or of copyhold or customary land, or of leasehold land held for sixty years or more unexpired at the time of purchase, subject or not to any exception or reservation of or in respect of mines or minerals therein, or of or in respect of rights or powers relative to the working of mines or minerals therein, or in other land: (8) in purchase, either in fee simple, or for a term of sixty years or more, of mines and minerals convenient to be held or worked with the settled land, or of any easement, right, or privilege convenient to be held with the settled land for mining or other purposes: (9) in payment to any person becoming absolutely entitled or empowered to give an absolute discharge: (10) in payment of costs, charges, and expenses of or incidental to the exercise of any of the powers, or the execution of any of the provisions of the Acts: and (11) in any other mode in which money produced by the exercise of a power of sale in the settlement is applicable thereunder (*x*).

Capital money to go and devolve as land.

All capital money, and all securities on which capital money may be invested, will be considered as land, and will go and devolve as the land wherefrom the money has arisen would have gone under the settlement (*y*).

(*x*) Sect. 21. (*y*) Sect. 22, sub-sect. 5.

Improvements.

The Act of 1882 authorizes the expenditure of money in executing improvements on settled land. Section 25 gives a long list of works which are to be deemed improvements, and the list is added to by sect. 13 of the Act of 1890. Sections 26 to 29 inclusive of the Act of 1882, and sect. 15 of the Act of 1890, provide with respect to improvements as follows:—

Approval by Land Commissioners of scheme for improvement and payment thereon.

Sect. 26.—(1) Where the tenant for life is desirous that capital money arising under this Act shall be applied in or towards payment for an improvement authorized by this Act, he may submit for approval to the trustees of the settlement, or to the Court, as the case may require, a scheme for the execution of the improvement, showing the proposed expenditure thereon.

(2.) Where the capital money to be expended is in the hands of trustees, then, after a scheme is approved by them, the trustees may apply that money in or towards payment for the whole or part of any work or operation comprised in the improvement, on—

(i.) A certificate of the Land Commissioners (z) certifying that the work or operation, or some specified part thereof, has been properly executed, and what amount is properly payable by the trustees in respect thereof, which certificate shall be conclusive in favour of the trustees as an authority and discharge for any payment made by them in pursuance thereof; or on

(ii.) A like certificate of a competent engineer or able practical surveyor nominated by the trustees and approved by the Commissioners, or by the Court, which certificate shall be conclusive as aforesaid; or on

(iii.) An order of the Court directing or authorizing the trustees to so apply a specified portion of the capital money.

(3.) Where the capital money to be expended is in Court, then, after a scheme is approved by the Court, the Court may, if it thinks fit, on a report or certificate of the Commissioners, or of a competent engineer or able practical

(z) Now the Board of Agriculture.

surveyor, approved by the Court, or on such other evidence as the Court thinks sufficient, make such order and give such directions as it thinks fit for the application of that money, or any part thereof, in or towards payment for the whole or part of any work or operation comprised in the improvement.

Concurrence in improvements.

Sect. 27. The tenant for life may join or concur with any other person interested in executing any improvement authorized by this Act, or in contributing to the cost thereof.

Obligation on tenant for life and successors to maintain, insure, &c.

Sect. 28.—(1.) The tenant for life, and each of his successors in title having, under the settlement, a limited estate or interest only in the settled land, shall, during such period, if any, as the Land Commissioners by certificate in any case prescribe, maintain and repair, at his own expense, every improvement executed under the foregoing provisions of this Act, and where a building or work in its nature insurable against damage by fire is comprised in the improvement, shall insure and keep insured the same, at his own expense, in such amount, if any, as the Commissioners by certificate in any case prescribe.

(2.) The tenant for life, or any of his successors as aforesaid shall not cut down or knowingly permit to be cut down, except in proper thinning, any trees planted as an improvement under the foregoing provisions of this Act.

(3.) The tenant for life, and each of his successors as aforesaid, shall from time to time, if required by the Commissioners, on or without the suggestion of any person having, under the settlement, any estate or interest in the settled land in possession, remainder, or otherwise, report to the Commissioners the state of every improvement executed under this Act, and the fact and particulars of fire insurance if any.

(4.) The Commissioners may vary any certificate made by them under this section, in such manner or to such extent as circumstances appear to them to require, but not so as to increase the liabilities of the tenant for life, or any of his successors as aforesaid.

(5.) If the tenant for life, or any of his successors as aforesaid,

fails in any respect to comply with the requisitions of this section, or does any act in contravention thereof, any person having, under the settlement, any estate or interest in the settled land in possession, remainder, or reversion, shall have a right of action, in respect of that default or act, against the tenant for life; and the estate of the tenant for life, after his death, shall be liable to make good to the persons entitled under the settlement any damages occasioned by that default or act.

Protection as regards waste in execution and repair of improvements.

Sect. 29. The tenant for life, and each of his successors in title having, under the settlement, a limited estate or interest only in settled land, and all persons employed by or under contract with the tenant for life, or any such successor, may from time to time enter on the settled land, and, without impeachment of waste by any remainder-man or reversioner, thereon execute any improvement authorized by this Act, or inspect, maintain, and repair the same, and, for the purposes thereof, on the settled land, do, make, and use all acts, works, and conveniences proper for the execution, maintenance, repair, and use thereof, and get and work freestone, limestone, clay, sand, and other substances, and make tramways and other ways, and burn and make bricks, tiles, and other things, and cut down and use timber and other trees not planted or left standing for shelter or ornament.

Power to sanction expenditure of capital money in improvements extended to cases where no scheme was submitted before improvement made.

Act of 1890, s. 15.—The Court may, in any case where it appears proper, make an order directing or authorizing capital money to be applied in or towards payment for any improvement authorized by the Settled Land Acts, 1882 to 1890, notwithstanding that a scheme was not, before the execution of the improvement, submitted for approval, as required by the Act of 1882, to the trustees of the settlement or to the Court.

Money in Court, or in hands of the trustees, may be invested as capital money under the Acts.

Money in Court under the Lands Clauses or other Acts, and liable to be laid out in land to be settled, and also money in the hands of the trustees of a settlement and liable to be so laid out, may be invested or

applied as capital money arising under the Settled Land Acts (*a*).

Application of money paid for purchase of lease or reversion.

Where capital money is purchase-money paid in respect of a lease, or any other estate or interest less than the fee simple, or in respect of a reversion dependent on any such lease, estate, or interest, the trustees or the Court may require the same to be laid out, invested, accumulated, and paid in such manner as will give to the parties interested the like benefit as they might lawfully have had from the lease, estate, interest, or reversion in respect whereof the money was paid, or as near thereto as may be (*b*).

Tenant for life may, with sanction of Court, sell settled heirlooms.

It has been already stated that a tenant for life impeachable for waste in respect of timber is authorized to cut and sell timber ripe and fit for cutting with the consent of the trustees or under an order of the Court (*c*). A tenant for life may also, with the sanction of the Court, sell personal chattels settled as heirlooms (*d*).

Definition of "tenant for life" for purpose of Acts.

The term "tenant for life," in the Settled Land Acts, means the person who is for the time being under a settlement beneficially entitled to possession of settled land; and if in any case there are two or more persons so entitled as tenants in common, or joint tenants, or for other concurrent estates or interests, they together constitute the tenant for life for the purposes of the Acts. Moreover, a person being tenant for life as above defined will be deemed to be such, notwithstanding that, under the settlement or otherwise, the settled land, or his estate or interest therein, is incumbered or charged to any extent (*e*).

Who are trustees for purposes of Acts.

The following persons are trustees of settled land for the purposes of the Acts, and in the following order, viz.: (1) the persons (if any) who under the settlement are trustees of the land with a present power of sale or of consenting to a sale thereof; (2) the persons (if any) who by the settlement are declared to be trustees thereof for the purposes of the

(*a*) Act of 1882, ss. 32, 33.
(*b*) Sect. 34.
(*c*) Sect. 35.
(*d*) Sect. 37.
(*e*) Sect. 2, sub-sects. 5, 6, 7.

Acts (*f*); (3) the persons (if any) who are under the settlement trustees with power of, or upon trust for, sale of other land comprised in the settlement, and subject to the same limitations or with power of consenting to or approval of the exercise of such a power; and (4) the persons (if any) who are under the settlement trustees with a future power of sale, or upon a future trust for sale of the land, or with power of consent to or approval of the exercise of such a future power, and whether the power or trust takes effect in all events or not (*g*). If there are no trustees the Court may appoint them on the application of the tenant for life or other person interested, or, in the case of an infant, of his guardian or next friend (*h*), and any vacancy in the trusteeship may be filled up under the Conveyancing Act, 1881, s. 31 (*i*).

Court may appoint trustees.

The trustees are fully protected from liability in respect of acts done or omitted to be done by them in the exercise of their discretion, and in particular they are authorized to adopt contracts entered into by the tenant for life (*j*).

Indemnity of trustees.

If at any time a difference arises between a tenant for life and the trustees respecting the exercise of any of the powers of the Act, the Court may give directions respecting the matter in difference (*k*); and a tenant for life, when intending to make a sale, exchange, partition, mortgage, or charge, or any lease (other than a lease for a term not exceeding twenty-one years, at rack rent, and whereby the lessee is not made dispunishable for waste), must give notice of his intention to the trustees of the settlement and to their solicitor, if known to him, by a registered letter, which is to be posted not less than one month before the making of the sale, &c., or of a contract for the same. But a person dealing in good faith with the tenant for life is not

Differences between tenant for life and trustees to be settled by Court.

A tenant for life intending to make a sale, &c., to give a month's notice to trustees and their solicitor;

(*f*) Act of 1882, sect. 2, subsect. 8.
(*g*) Act of 1890, s. 16.
(*h*) Act of 1882, s. 38.
(*i*) Act of 1890, s. 17.
(*j*) Act of 1882, s. 42.
(*k*) Act of 1882, s. 44.

concerned to see or inquire respecting the giving of the notice (*l*).

to be deemed a trustee of powers.

A tenant for life in exercising any power is bound to have regard to the interests of all parties entitled under the settlement, and is, in relation to the exercise thereof by him, to be deemed to be in the position and to have the duties and liabilities of a trustee (*m*).

Notice may be general.

The notice may be a general one, and may be waived by the trustees in any particular case, or generally, and they may accept less than a month's notice (*n*). Considering the uselessness of a general notice, it seems better to negative the section altogether. It seems clear that this can be done under sect. 57 of the Act of 1882.

There must be at least two trustees when the notice is given.

At the date of the notice the number of trustees must not be less than two, unless a contrary intention is expressed in the settlement (*o*). If at the time when a tenant for life intends to sell, &c., there is only one trustee, he must appoint, or procure the appointment, of a second one for the purpose of receiving the notice.

Powers may be exercised by tenant for life, notwithstanding assignment or incumbrance of his life interest.

The fact that a tenant for life has assigned or incumbered his life estate does not prevent him from exercising the powers of the Act, but the rights of the assignee or incumbrancer will not be affected without his consent, except that unless he is actually in possession, his consent is not necessary to a lease if made at the best rent, without a fine (*p*). An assignment or charge made in consideration of marriage or as part of a family arrangement, not being a security for money advanced, is to be deemed one of the instruments creating the settlement (*q*), and may therefore be overridden by an exercise of the powers of the Act. All provisions attempting to preclude the tenant for life from exercising the powers of the Acts are void, and the exercise by him of any such powers will not occasion a forfeiture (*r*).

(*l*) Sect. 45; Act of 1890, s. 7.
(*m*) Act of 1882, s. 53.
(*n*) Act of 1884, s. 5.
(*o*) Act of 1882, s. 45.
(*p*) Sect. 50.
(*q*) Act of 1890, s. 4.
(*r*) Act of 1882, ss. 51, 52.

Powers given by Act are cumulative.

The powers given by the Act are cumulative, and in addition to any express power contained in the settlement for the same purpose, but no such express power can be exercised in future without the consent of the tenant for life, or where two or more persons constitute together a tenant for life, one of such persons (*s*).

Enumeration of other limited owners to have powers of tenant for life.

The Act of 1882 confers on each of the following persons, when his estate or interest is in possession, the powers of a tenant for life (namely): (1) a tenant in tail, including a tenant in tail who is by Act of Parliament restrained from barring or defeating his estate tail, and although the reversion is in the Crown, and so that the exercise by him of his powers under this Act shall bind the Crown, but not including such a tenant in tail where the land in respect whereof he is so restrained was purchased with money provided by Parliament in consideration of public services: (2) a tenant in fee simple (*t*), with an executory limitation, gift, or disposition over, on failure of his issue, or in any other event: (3) a person entitled to a base fee, although the reversion is in the Crown, and so that the exercise by him of his powers under this Act shall bind the Crown: (4) a tenant for years determinable on life, not holding merely under a lease at a rent: (5) a tenant for the life of another, not holding merely under a lease at a rent: (6) a tenant for his own or any other life, or for years determinable on life, whose estate is liable to cease in any event during that life, whether by expiration of the estate, or by conditional limitation, or otherwise, or to be defeated by an executory limitation, gift, or disposition over, or is subject to a trust for accumulation of income for payment of debts or other purpose: (7) a tenant in tail after possibility of issue extinct: (8) a tenant by the curtesy: and (9) a person entitled to the income of land under a trust or direction for payment thereof to him during his own or any other life, whether subject to expenses

(*s*) Sect. 56; Act of 1884, s. 6.

(*t*) This would not extend to a person in whom leaseholds are vested for the whole term, subject to an executory limitation, &c., the expression "fee simple" being a technical one.

of management or not, or until sale of the land, or until forfeiture of his interest therein on bankruptcy or other event.

Infant absolutely entitled to be deemed tenant for life.

Where a person, who is in his own right seised of or entitled in possession to land, is an infant, the land is to be deemed settled land, and the infant is to be deemed tenant for life thereof. And where a tenant for life, or a person having the powers of a tenant for life, is an infant, or an infant would, if he were of full age, be a tenant for life, or have the powers of a tenant for life, the powers of a tenant for life under the Acts may be exercised on his behalf by the trustees of the settlement, and if there are none, then by such person and in such manner as the Court, on the application of a testamentary or other guardian or next friend of the infant, either generally or in a particular instance, orders (*u*).

How powers to be exercised in case of infants.

Married women.

When the tenant for life is a married woman, she can, if entitled for her separate use, exercise the powers of the Act alone, but otherwise her husband must concur; and a restraint on anticipation will not prevent her from exercising any of the powers (*x*).

Lunatics.

In the case of a lunatic, his committee may, under an order in lunacy, act for him (*y*).

In case of land subject to a trust for sale, beneficiary for life has powers under the Act, to be exercised with leave of the Court, and in the meantime trustees may sell.

The Act of 1882, s. 63, provides that where land is subject to a trust for sale, and for investment of the proceeds so that some one is entitled beneficially to the income for life, or other limited interest, the person entitled to the rents and profits of the land until sale shall have all the powers of a tenant for life under the Act; but by the Act of 1884, it is declared that the powers conferred by sect. 63 shall not be exercised without leave of the Court (*z*), and that the consent of

(*u*) Sects. 59, 60. These sections provide a convenient mode of selling an infant's land, whether that land is in settlement or not.

(*x*) Sect. 61. A married woman exercising the powers of the Act with the concurrence of her husband under this section need not acknowledge the deed.

(*y*) Sect. 62.

(*z*) Act of 1884, s. 7. This enactment is likely to cause inconvenience. It is supposed that its object is the same as that of sect. 56 of the Act of 1882, viz., to prevent a conflict between the provisions of the settlement and the Act. But if so, it goes beyond the necessity of the case, as it requires the leave of the Court to an exercise of the statutory powers, even where the settlement contains no power for the same

Sect. 7 of Act of 1884 likely to cause inconvenience.

the person or any of the persons in whom those powers are vested, shall not be necessary to any exercise of the trusts or powers vested in the trustees by the instrument (*a*). It is also provided that the Court may by order, in any case in which it thinks fit, give leave to exercise all or any of those powers, and the order is to name the person or persons to whom leave is given. After the order, neither the trustees of the settlement nor any person other than a person having the leave can execute any trust or power created by the settlement for any purpose for which leave is by the order given to exercise a power conferred by the Act of 1882. The order may be registered and re-registered as a *lis pendens*, and until so registered will not affect any person dealing with the trustees.

Effect of order giving leave to exercise powers.

The following points have been decided under the Acts:—

1. That a tenant for life may sell, notwithstanding that the remainderman has sold his interest in the property to a *bonâ fide* purchaser for value (*b*).

Tenant for life may sell, notwithstanding sale by remainderman before Act.

2. That where according to the terms of the settlement, a sole surviving trustee can sell, one trustee is sufficient for the purposes of the Act (*c*).

3. That the Court will not appoint the tenant for life or his solicitor to be a trustee (*d*), nor, as a general rule, two persons who are near relatives to each other (*e*).

Who will not be appointed a trustee.

4. That where lands are vested in trustees during the life of A. in trust to manage and make various payments and to pay the ultimate surplus of the rents

Instances of persons held to have or not to have powers of a tenant for life.

purpose. Suppose, for example, that since the Act of 1882 land has been conveyed or devised to trustees in trust to sell, but without any power of leasing in the meantime, the statutory power being considered sufficient, the new enactment will apply, and the leave of the Court will have to be obtained before leases can be granted.

(*a*) Sect. 6. Before the passing of the Act of 1884, it had been decided that the consent was not necessary to the exercise by the trustees of an imperative trust as distinguished from a discretionary power. Taylor *v.* Poncia, 25 C. D. 646.

(*b*) Wheelwright *v.* Walker, 23 C. D. 761.

(*c*) Garnett Orme and Hargreave's Contract, 25 C. D. 595.

(*d*) Wheelwright *v.* Walker, *ubi supra;* Kemp's Settled Estate, 24 C. D. 485; *Re* Harrop's Trusts, *ib.* 717.

(*e*) *Re* Knowle's Settled Estates, 27 C. D. 707.

and profits to A., A. is tenant for life within the Act (*f*). But if the trustees are directed to apply the rents and profits during the life of A. for the benefit of A. and his wife and children, or any of them, this does not constitute A., or A. and his wife together, a tenant for life within the Act, although there is no child in existence (*g*). And if the trustees are directed to accumulate the rents for a term of years, and at the end of that term to pay the rents to A. for life, A. has not during the term the powers of the tenant for life (*h*).

Other instances of same.

5. That where land is held in trust for an infant subject to an executory gift over in the event of his dying under age, he is a person having the powers of a tenant for life under the Acts (*i*). But if land is directed to be sold and the proceeds to be held in trust for a class of persons who shall attain a certain age, there being no gift to them of the income in the meantime, but only a discretionary trust to apply it for their maintenance, the persons entitled in expectancy under this trust have not the powers of a tenant for life under the Acts (*k*).

During infancy of tenant for life, consent of trustees necessary to the exercise of any power created by settlement.

6. That where the tenant for life is an infant, the consent of the trustees of the settlement is, under sects. 56 and 60, necessary to the exercise of any power of sale or leasing vested by the settlement in any other persons, *e.g.*, the infant's guardians (*l*).

Derivative settlement by remainderman.

7. That where there is a settlement and derivative settlement made by persons taking interests not yet in possession under the original settlement, the original settlement is alone the settlement for the purposes of the Acts (*m*).

Right of tenant for life, when land sold subject to beneficial lease.

8. That, under sect. 34 of the Act of 1882, where lands subject to a beneficial lease are sold, the tenant for life will be entitled during the rest of the term to

(*f*) *Re* Jones, 26 C. D. 736; *Re* Clitheroe's Estate, 28 C. D. 378; *Re* Paget's Settled Estates, 30 C. D. 161. This is so, even though the rents may be exhausted by the outgoings, so that A. receives nothing.

(*g*) *Re* Atkinson, 31 C. D. 577.

(*h*) *In re* Strangways, 34 C. D. 423.

(*i*) *In re* Morgan, 24 C. D. 114.

(*k*) *In re* Horne's Settled Estate, 39 C. D. 84.

(*l*) Duke of Newcastle's Estates, 24 C. D. 129. This decision is not affected by sect. 6 of the Act of 1884.

(*m*) *Re* Knowle's Settled Estates, 27 C. D. 707.

so much only of the income of the invested purchase-money as equals the rent under the lease, and the rest of the income will be accumulated (*n*).

9. That sect. 15 of the Act of 1890 is retrospective and enables the trustees to pay out of capital for improvements executed by the tenant for life between 1882 and 1890 without having submitted a scheme before the expenditure was incurred (*o*). Sect. 15 of Act of 1890 retrospective.

10. That the notice to the trustees required by sect. 45 of the Act of 1882, if given one month before completion, is sufficient, although not given before the contract is entered into (*p*). Notice to trustee, when to be given.

11. That where persons have been appointed under sect. 60 to exercise on behalf of an infant tenant for life the powers of the Act, there being no trustees of the settlement within the definition in sect. 2, sub-sect. 8, the persons so appointed can make a good title without its being necessary to appoint under sect. 38 trustees of the settlement, to whom notice of the intended sale can be given under sect. 45 (*q*). When sale made under sect. 60 trustees need not be appointed.

12. That the proceeds of the sale of heirlooms may be applied in the discharge of incumbrances affecting the settled freehold land, without keeping such incumbrances on foot for the benefit of the infant remainderman, to whom the heirlooms if unsold would have belonged absolutely on his attaining twenty-one (*r*). Proceeds of heirlooms applicable to pay off incumbrances on freeholds.

13. That chattels which by a settlement are made to devolve with a baronetcy as heirlooms are within sect. 37 of the Act (*s*). Chattels devolving with dignity.

14. That a tenant for life of the proceeds of land directed to be sold is to be deemed "impeachable for waste in respect of minerals" within the meaning of sect. 11 (*t*). Construction of sect. 11 as regards tenant for life of proceeds of land directed to be sold.

15. That the Court, in the exercise of the discretion Sale of mansion house

(*n*) Cottrell *v.* Cottrell, 28 C. D. 628.

(*o*) *In re* Ormrod's Settled Estate, (1892) 2 Ch. 318.

(*p*) Duke of Marlborough *v.* Sartoris, 32 C. D. 616.

(*q*) *In re* Countess of Dudley's Contract, 35 C. D. 338.

(*r*) *In re* Duke of Marlborough's Settlement, 30 C. D. 127.

(*s*) *In re* Rivett Carnac's Will, 30 C. D. 136.

(*t*) *Re* Ridge, 31 C. D. 504.

by Court, when it will be ordered.

given by sect. 10 of the Act of 1890 as to ordering a sale of the mansion-house, will have regard not only to the wishes and interests of the tenant for life and remaindermen, but to all the circumstances of the case, *e. g.*, the derelict condition of the estate, the fact of its being in the possession of a mortgagee, and the consequent prejudice to the interests of the tenants (*u*).

Lord not entitled to double fine on admission of purchaser to copyholds sold by beneficial tenant for life.

16. That upon a sale by a beneficial tenant for life of copyholds leased to trustees the lord is entitled to a single fine only on the admission of the purchaser (*x*).

Power of tenant for life not affected by decree for execution of trusts.

17. That a tenant for life may sell without the sanction of the Court, notwithstanding a decree for the execution of the trusts of the settlement (*y*).

18. That a tenant for life acting honestly is entitled to be paid out of capital moneys the expenses incurred by him in an unsuccessful attempt to sell, and the Court may order such expenses to be raised by a charge on the settled land (*z*).

Tenant for life not entitled to timber money on sale of estate.

19. That where there is a condition, on a sale by a tenant for life, that the timber shall be paid for separately, the timber money is capital, and does not belong to the tenant for life, although he may be empowered by the terms of the instrument to cut timber (*a*).

Construction of sect. 53.

20. That sect. 53 of the Act of 1882 does not impose a condition affecting the title to the land sold by the tenant for life, but it is a direction, the non-observance of which renders him liable as if he were a trustee for any pecuniary loss which may arise thereby to the parties entitled under the settlement (*b*).

A tenant for life of a settled share may sell that share, *semble*.

Where an undivided share of land is the subject of a settlement, the other share being unsettled, it is apprehended that the tenant for life of the settled

(*u*) *In re* Marquis of Ailesbury's Settled Estates, (1892) 1 Ch. 506. See also *In re* Sebright's Settled Estates, 33 C. D. 420.

(*x*) Naylor and Spendlas' Contract, 34 C. D. 217.

(*y*) Cardigan *v.* Curzon Howe, 39 C. D. 531.

(*z*) *In re* Smith's Settled Estates, (1891) 3 Ch. 65.

(*a*) *In re* Llewellyn, 37 C. D. 317.

(*b*) *In re* Marquis of Ailesbury's Settled Estates, (1892) 1 Ch. 506.

share may sell that share without the concurrence of the owner of the other share (*c*).

Drainage charges can now be paid out of capital.

Under the Act of 1882 it was held that land drainage charges, being terminable, cannot be paid off out of capital money (*d*). But the law in this respect has been altered by the Act of 1887 (*e*). In accordance with that Act, it has been held that where settled land is subject to a land drainage charge repayable by instalments, capital money arising under the Act of 1882 may be applied in payment of the instalments, or in payment of a gross sum to the lender including a bonus stipulated for by him as compensation for loss of interest (*f*).

The rules of Court made under the Settled Land Act, 1882, are set out in an Appendix to this Volume.

III. *Miscellaneous points relating to settlements.*

Trustees' receipt clause now unnecessary.

A clause enabling the trustees to give receipts for trust money or funds payable or transferable to them is now unnecessary (*g*).

As to powers to appoint new trustees.

The power to appoint new trustees conferred by the Conveyancing Act, 1881 (*h*), is a very complete one, and may, as a general rule, be relied on. If it is intended, as is usually the case, that the power shall be vested in the husband and wife and the survivor of them, this should be so stated in the deed.

Provision for indemnity of trustees unnecessary.

It was formerly usual to insert in settlements a provision for the indemnity and reimbursement of trustees,

(*c*) See sect. 2, sub-s. 10 (i). The case of *In re* Collinge's Settled Estates, 36 C. D. 576, seems, at first sight, to decide the contrary. But, on looking at the facts in that case, it will be seen (1) that the entirety of the land was originally settled, and (2) that the settlement was still in force as to the entirety; because, on the death of James (who had issue), it would have become the duty of the trustees to sell the whole, and not a moiety only. The purchaser from James was not owner in fee simple of a moiety, but owner only of the rents and profits of a moiety during James's life, and of a moiety of the proceeds of the sale after his death.

Re Collinge's Settlement explained.

(*d*) *Re* Knatchbull's Settled Estates, 27 C. D. 349.

(*e*) 50 & 51 Vict. c. 30.

(*f*) *In re* Lord Egmont's Settled Estates, 45 C. D. 395, disapproving of *In re* Lord Sudeley's Estates, 37 C. D. 123.

(*g*) See 22 & 23 Vict. c. 35, s. 23; Conveyancing Act, 1881, s. 36.

(*h*) Sects. 31 to 34.

but this provision, which was never of much value, is now rendered unnecessary by the 22 & 23 Vict. c. 35, s. 31 (*i*).

Trustees may compound and settle claims, &c.

The Conveyancing Act, 1881, provides, with respect to executorships and trusts created after the 31st December, 1881, that an executor or two or more trustees acting together, or a sole acting trustee where, by the instrument, if any, creating the trust, a sole trustee is authorized to execute the powers and trusts thereof, may, if and as he or they think fit, accept any composition, or any security, real or personal, for any debt, or for any property, real or personal, claimed, and may allow any time for payment of any debt, and may compromise, compound, abandon, submit to arbitration, or otherwise settle any debt, account, claim, or thing whatever relating to the trust, and for any of those purposes may enter into, give, execute, and do such agreements, instruments of composition or arrangement, releases, and other things as to them or him seem expedient, without being responsible for any loss occasioned by any act or thing so done in good faith (*k*).

Settlement by infant voidable.

A settlement by an infant is voidable, *i. e.*, it is binding until the infant elects to avoid it (*l*).

Infants Settlement Act.

The 18 & 19 Vict. c. 43 (explained as extending to

(*i*) The enactment above referred to is as follows: "Every deed, will, or other instrument creating a trust either expressly or by implication shall, without prejudice to the clauses actually contained therein, be deemed to contain a clause in the words or to the effect following: that is to say, 'That the trustees or trustee for the time being of the said deed, will, or other instrument, shall be respectively chargeable only for such moneys, stocks, funds, and securities as they shall respectively actually receive, notwithstanding their respectively signing any receipt for the sake of conformity, and shall be answerable and accountable only for their own acts, receipts, neglects, or defaults, and not for those of each other nor for any banker, broker, or other person with whom any trust moneys or securities may be deposited, nor for the insufficiency or deficiency of any stocks, funds, or securities, nor for any other loss, unless the same shall happen through their own wilful default respectively; and also that it shall be lawful for the trustees or trustee for the time being of the said deed, will, or other instrument to reimburse themselves or himself or pay or discharge out of the trust premises all expenses incurred in or about the execution of the trusts or powers of the said deed, will, or other instrument.'"

(*k*) Sect. 37.

(*l*) Smith *v.* Lucas, 18 C. D. 543; Cooper *v.* Cooper, 13 App. Ca. 88; Duncan *v.* Dixon, 44 C. D. 211.

Ireland by the 23 & 24 Vict. c. 83) authorizes *infants* upon or in contemplation of marriage, with the sanction of the Court (if males, at any time after the age of twenty, and if females, at any time after the age of seventeen), to make binding settlements of all or any part of their real or personal property, or property over which they may have any power of appointment. But as to appointments under a power, or any disentailing assurance which may have been executed by the infant tenant in tail under the provisions of the Act, it is provided that in case the infant dies under twenty-one, such appointment or disentailing assurance shall be absolutely void. Before approving a settlement under this Act, the Court will not direct an inquiry as to the propriety of the contemplated marriage (*m*).

Act authorizes settlement after marriage.

It has been held that the Act applies to a post-nuptial settlement, if made upon the occasion of the marriage so as to be connected with it (*n*).

IV. *Voluntary dispositions, how far valid as against* (1) *subsequent purchasers*, (2) *creditors*, (3) *the settlor himself and his representatives.*

27 Eliz. c. 4.

(1) By the stat. 27 Eliz. c. 4, all conveyances, &c., of lands, tenements or hereditaments, made with the intent to defraud purchasers, and also all conveyances with any clause of revocation at the grantor's pleasure, are made void against subsequent purchasers.

All voluntary settlements fraudulent under above Act.

It has been long settled that all voluntary deeds are to be deemed fraudulent and void within the meaning of the above statute, and it makes no difference that the subsequent purchaser has notice of the prior voluntary conveyance (*o*).

Principle on which it has been so held.

The principle on which voluntary conveyances have been held to be fraudulent and void as against subsequent purchasers appears to be, that by selling the

(*m*) *In re* Dalton, 6 De G. M. & G. 201.

(*n*) *In re* Sampson and Wall, 25 C. D. 482.

(*o*) Doe d. Otley *v.* Manning, 9 East, 59.

property afterwards for a valuable consideration the vendor so entirely repudiates the former voluntary conveyance, and shows his intention to sell, as that it shall be taken conclusively against him and the person to whom he conveyed that such intention existed when he made the voluntary conveyance, and consequently that it was made in order to defeat the purchaser (*p*). This being the principle, it follows that the statute only applies where the voluntary conveyance and the subsequent sale are by the same person, and therefore, if A. makes a voluntary conveyance and dies, a sale by the heir of A. will not defeat it (*q*). But a conveyance which is *really* fraudulent, and not merely voluntary, is void against a subsequent purchaser, although the person making the fraudulent conveyance and the person selling may be different (*r*).

Doctrine only applies where settlor and person making voluntary conveyance are the same.

A voluntary conveyance is binding on the grantor and on all persons (other than purchasers for valuable consideration) claiming under him. Consequently, if A. makes two voluntary conveyances, first to B. and then to C., and C. sells for valuable consideration to D., B.'s title is good against D., because after A. had conveyed to B., he had no estate left in him which he could convey to any one but a purchaser for value, and as nothing therefore passed to C., D. could be in no better position (*s*).

Voluntary conveyance good against purchaser from subsequent voluntary grantee.

Again, if a person to whom a voluntary conveyance is made sells and conveys for value, that which was in its creation a voluntary conveyance, and voidable by a purchaser, becomes good and unimpeachable, and the purchaser from such volunteer cannot be disturbed by a subsequent purchaser from the original settlor.

Purchaser from voluntary grantee cannot be disturbed.

Marriage is a valuable consideration, and consequently a settlement made previously to and in consideration of marriage in favour of the husband and wife and their issue is a settlement for valuable con-

Marriage a valuable consideration sufficient to support antenuptial settlements.

(*p*) *Per* Campbell, C. J., in Doe d. Newman *v.* Rusham, 17 Q. B. 723; 21 L. J. Q. B. 139.

(*q*) Doe d. Newman *v.* Rusham, *ubi supra*. See also Parker *v.* Carter, 4 Hare, 409.

(*r*) Burrell's case, 6 Rep. 72.

(*s*) See Doe d. Newman *v.* Rusham, *ubi supra*.

sideration, so as to exclude the operation of 27 Eliz. chap. 4. But a settlement made after marriage, unless in pursuance of a prior agreement, or unless there is some other consideration, is voluntary; so also if a marriage settlement contains limitations in favour of collateral relations or strangers, such limitations are *primâ facie* voluntary (*t*), and so is a provision made by either party for a child by a former marriage, or an illegitimate child (*u*).

Limitations in favour of collateral relations, *primâ facie* voluntary.

If a settlement, whether of the husband's or the wife's lands, contains limitations in favour of strangers to the marriage consideration (including in this expression children of a former or of a subsequent marriage), which are so mixed up with limitations in favour of persons within such consideration that effect cannot be given to the provisions in favour of those within the consideration without giving effect also to those in favour of the strangers, the whole settlement will be upheld (*x*).

Where limitations to collaterals are mixed up with those to children, the whole settlement will be upheld.

As regards post-nuptial settlements a very slight consideration, *e. g.*, a loan of money made to the settlor by a relative of his wife, is sufficient to take a case out of the statute (*y*). And a settlement by husband and wife of the wife's property to her separate use for life with remainder to the husband for life, with remainder to the children, has been held to be a settlement for valuable consideration, such consideration being the modification by the husband of his life interest in possession, and by the wife of her inheritance (*z*).

A very slight consideration sufficient to support a post-nuptial settlement.

(*t*) Johnson *v.* Legard, T. & R. 281; Cotterell *v.* Homer, 13 Sim. 506.

(*u*) Price *v.* Jenkins, 4 C. D. 483; *In re* Cameron and Wells, 37 C. D. 32; De Mestre *v.* Wells, (1891) 2 Ch. 264. This case explains or overrules Newstead *v.* Searles, 1 Atk. 264; Clarke *v.* Wright, 6 H. & N. 849; Gale *v.* Gale, 6 C. D. 144, so far as those cases can be considered as an authority for a doctrine contrary to that in the text.

(*x*) Clayton *v.* Lord Wilton, 3 Madd. 302, n.; Newstead *v.* Searles, 1 Atk. 264.

(*y*) Bayspoole *v.* Collins, L. R. 6 Ch. App. 228. See also Townend *v.* Toker, L. R. 1 Ch. App. 46; *In re* Johnson, 20 C. D. 389.

(*z*) Hewison *v.* Negus, 16 Beav. 594; Teasdale *v.* Braithwaite, L. R. 5 C. D. 631; *Re* Foster and Lister, *ib.* 6 C. D. 87. But as regards property belonging to the wife for her separate use, or coming to her under the Married Women's Property Act, 1882, such a settlement would be by the wife alone, and therefore voluntary. Shurmer *v.* Sedgwick, W. N. 1883, p. 139.

Settlement of leaseholds, whether within the statute.

It has been held that a settlement of leasehold property to which a liability is attached is not a voluntary settlement so as to be within the stat. 27 Eliz. c. 4 (*a*).

Consideration may be proved by extrinsic evidence.

Where a deed appears on the face of it to be voluntary, evidence may be given to prove some consideration not mentioned in it, it not being contradictory to an instrument to prove a larger consideration than that which is stated (*b*). With a view to let in evidence of this kind, the words "and for divers other causes and considerations" are frequently introduced, but they are not necessary.

Danger of taking a title from a person who has made a voluntary settlement.

It follows that a purchaser can seldom be advised to take a title from a person who has executed a voluntary settlement, because there may have been some other consideration not disclosed by the deed, or the volunteer may have subsequently dealt with the property for a valuable consideration, and its invalidity therefore depends on a doubtful state of facts. For these reasons, and also because the settlor cannot compel the purchaser to assist him in defeating the previous conveyance, it has been decided that a contract for sale entered into by the voluntary settlor may be enforced against him, but not by him (*c*).

13 Eliz. c. 5.

(2) By the stat. 13 Eliz. c. 5 (made perpetual by the 29 Eliz. c. 5), all conveyances, &c., of lands, tenements, or hereditaments, goods or chattels (*d*), made with intent to defeat, hinder, or delay creditors, are made void as against such creditors; but the Act contains a saving clause in favour of purchasers for valuable consideration without notice.

Voluntary conveyance not necessarily void against creditors.

In order to come within this statute a deed must be made with intent to defeat, hinder, or delay creditors. If such an intent is clear, the deed will be void, even if made for valuable consideration (*e*). A voluntary

(*a*) Price *v.* Jenkins, 5 C. D. 619.

(*b*) Clifford *v.* Turrell, 1 Y. & C. C. C. 140; Pott *v.* Todhunter, 2 Coll. 76.

(*c*) Buckle *v.* Mitchell, 18 Ves. 103; Smith *v.* Garland, 2 Mer. 123. See Peter *v.* Nicholls, L. R. 11 Eq. 391; Clarke *v.* Willott, L. R. 7 Ex. 313; Briggs *v.* Spencer, (1891) 2 Ch. 127.

(*d*) It will be observed, that while the stat. 27 Eliz. c. 4, applies only to lands and hereditaments, the stat. 13 Eliz. c. 5 applies to goods and chattels also.

(*e*) Holmes *v.* Penney, 3 K. & J. 90.

deed will be presumed to be made with intent to defeat, &c., creditors, if that will be its probable effect having regard to the amount of property included in it, and the amount of the settlor's liabilities at the time (*f*). So an advancement to a son made by a person largely indebted at the time will be void under this statute as against creditors (*g*).

Settlement of leaseholds, whether within the statute.

Whether a settlement of leasehold property to which a liability is attached is a settlement for value, so as to be good on that account againt creditors under the Act 13 Eliz. c. 5, is doubtful (*h*).

Subsequent creditors may come in.

If a deed is set aside as being void against creditors under the statute, the property comprised in it becomes assets for the payment of debts generally, so that subsequent creditors are entitled to participate in it (*i*).

Voluntary settlement may be set aside, if settlor about to engage in hazardous business.

A voluntary settlement may be set aside, although the settlor's assets, irrespective of what is included therein, may be sufficient to pay his debts at the date of the deed, if the settlor contemplated a state of things which might not improbably result in bankruptcy or insolvency, as if he were engaged or engaging in a hazardous or untried business, or was incurring heavy liabilities (*k*); and a voluntary deed may be set aside at the suit of a subsequent creditor, although there may be no creditor whose debt was in existence at the date of the settlement (*l*).

Settlement where life income made determinable on bankruptcy held fraudulent.

A voluntary settlement by a person not then engaged in trade, and who owed no debts, by which money was settled in trust to pay the income to the husband for life or until bankruptcy, &c., with remainder to his wife for life, for her separate use, with remainder to the children, and an ultimate remainder to the settlor,

(*f*) *Per* Kindersley, V.-C., in Jenkyn *v.* Vaughan, 3 Drew. 424; Thompson *v.* Webster, 4 Drew. 632; S. C. on appeal, 4 De G. & J. 600; Ridler *v.* Ridler, *ubi supra;* Freeman *v.* Pope, 5 Ch. 538. But see *Ex parte* Mercer, 17 Q. B. D. 290.

(*g*) Christy *v.* Courtenay, 13 Beav. 96; Barruck *v.* McCulloch, 3 K. & J. 110.

(*h*) Ridler *v.* Ridler, 22 C. D. 74; *contra* Harris *v.* Tubb, 42 C. D. 79.

(*i*) Richardson *v.* Smallwood, Jac. 552.

(*k*) Crossley *v.* Elworthy, L. R. 12 Eq. 158; Mackay *v.* Douglas, L. R. 14 Eq. 106; *Ex parte* Russell, 19 C. D. 588.

(*l*) Mackay *v.* Douglas, *ubi supra;* Taylor *v.* Coenen, 1 C. D. 636.

was held fraudulent and void against creditors, the settlor having many years after the settlement engaged in trade and become bankrupt (*m*).

Consideration may be proved by extrinsic evidence.

A settlement which is in form voluntary may be proved by extrinsic evidence to have been made for a valuable consideration (*n*), and an instrument voluntary in its inception may by *ex post facto* matter cease to be voluntary in the hands of those who have given value on the faith of it, or if it has formed part of the inducement to a marriage (*o*).

Saving clause in Act, to whom it applies.

The saving clause in the Act in favour of purchasers for value without notice, extends to the purchaser of any interest under the deed impeached, whether that interest be legal or equitable, and prevents the deed from being void against him (*p*).

Provisions of Bankruptcy Act, 1883, as to voluntary deeds.

The rule by which voluntary settlements are void against creditors is extended by the Bankruptcy Act, 1883 (*q*), which provides that any settlement of property not being a settlement made before and in consideration of marriage, or in favour of a purchaser or incumbrancer in good faith, and for valuable consideration, or a settlement made on or for the wife or children of the settlor of property which has accrued to the settlor after marriage in right of his wife, shall, if the settlor becomes bankrupt within two years from the date of the settlement, be void as against the trustee of the bankrupt, and shall, if he becomes bankrupt at any subsequent time within ten years after the date of the settlement, be void against the trustee, unless the parties claiming under it can prove that the settlor was at the time of making the settlement able to pay all his debts without the aid of the property comprised in the settlement, and that the interest of the settlor in such property had passed to the trustees of the settlement on the execution thereof; and the Act also provides that any covenant or contract made in consideration of marriage for the future settlement

(*m*) *Re* Pearson, 3 C. D. 807.
(*n*) Pott *v.* Todhunter, 2 Coll. 76.
(*o*) George *v.* Milbanke, 9 Ves. 193; Payne *v.* Mortimer, 1 Giff. 118.
(*p*) Halifax Banking Company *v.* Gledhill, (1891) 1 Ch. 31.
(*q*) 46 & 47 Vict. c. 52, s. 47.

on or for the settlor's wife or children of any money or property wherein he had not at the date of the marriage any estate or interest, whether vested or contingent, in possession or remainder, and not being money or property of or in right of his wife, shall, upon his becoming bankrupt before the property or money has been actually transferred or paid pursuant to the contract or covenant, be void against the trustee in bankruptcy.

Enactment does not apply to covenant to pay money.

It has been held with reference to a clause to the above effect in the repealed Act of 1869, that the enactment applied to settlements executed before as well as after the Act came into operation (*r*), but that it did not apply to a covenant for payment of a sum of money not specifically ear-marked; and where a person covenanted on his marriage to pay a sum of £6,000 to the trustees, and became a bankrupt within two years, his trustees were allowed to prove against his estate under the covenant (*s*).

Trustee under voluntary deed cannot make a title for ten years.

It has been held that a trustee for sale under a voluntary settlement cannot, before the expiration of ten years from its date, make a title to a purchaser such as the latter is bound to accept, even if the settlor concurs (*t*).

Voluntary covenants and settlements are binding on the settlor if complete, but not otherwise.

(3) A voluntary disposition of property is valid against the settlor, but the disposition must be complete, *i.e.*, the settlor must have done everything which according to the nature of the property is necessary to be done on his part. Thus, if the legal owner of Consols, standing in his own name (*u*), or of Bank shares transferable only by entry in the bank books (*x*), purports to assign such Consols or shares by deed, or if a person possessed of leasehold property purports to assign it by a writing not under seal (*y*), or if the owner of shares in a colliery signs an entry in the partnership

(*r*) *Ex parte* Dawson, L. R. 19 Eq. 433.

(*s*) *Ex parte* Bishop, L. R. 8 Ch. 718.

(*t*) *In re* Briggs and Spicer, (1891) 2 Ch. 127.

(*u*) Bridge *v.* Bridge, 16 Beav. 315; Beach *v.* Keep, 18 Beav. 285.

(*x*) Milroy *v.* Lord, 4 D. F. & J. 264.

(*y*) Richards *v.* Delbridge, L. R. 18 Eq. 11.

books, to the effect that he agrees to transfer such shares, which entry is not sufficient to pass them according to the partnership articles (*z*), or if the owner of railway stock hands over the certificate of such stock, saying, "These are yours," or using words to that effect (*a*), in each of these cases the intended gift, if in favour of a volunteer, is inoperative. On the other hand, a voluntary assignment by deed or writing of a legal or equitable chose in action (*b*), or of a reversionary interest in stock standing in the name of a trustee (*c*), or of money owing on a bill of sale (*d*), will be sustained, on the ground that the assignor has done all that he can, having regard to the nature of the property, to divest himself of his interest; nor is it necessary that notice of the assignment shall have been given to the debtor or the trustee, the giving of such notice being an act within the province of the assignee rather than the assignor.

Voluntary declaration of trust good, but instruments void as incomplete assignments not good as declarations of trust.

A voluntary agreement, whether by deed or writing, to make a disposition of property in favour of another cannot be enforced, but a voluntary declaration of trust, being a complete transaction is valid (*e*), and such declaration may, as regards property other than lands, tenements, or hereditaments (*f*), be either in writing or by parol (*g*). In some cases it has been sought to sustain as valid declarations of trust, instruments purporting to be assignments, but which are incomplete as such. The principle applicable to such cases has been thus laid down by Turner, V.-C., in *Milroy* v. *Lord* (*h*). "If the settlement is intended to be effectuated by one of the modes to which I have referred (viz., transfer and declaration of trust), the

(*z*) Heartley *v.* Nicholson, L. R. 19 Eq. 233.

(*a*) Moore *v.* Moore, L. R. 18 Eq. 474.

(*b*) Fortescue *v.* Barnett, 3 M. & K. 36. Since the Judicature Act an assignment in writing of a legal chose in action where notice is given, passes the debt at law. Harding *v.* Harding, 17 Q. B. D. 442.

(*c*) Kekewich *v.* Manning, 1 De G. M. & G. 176.

(*d*) *In re* Patrick, (1891) 1 Ch. 87.

(*e*) Pulvertoft *v.* Pulvertoft, 18 Ves. 99; Jefferys *v.* Jefferys, 1 Cr. & P. 138; Meek *v.* Kettlewell, 1 Ph. 342.

(*f*) A declaration of trust of lands, tenements, or hereditaments must be in writing: 29 Car. 2, c. 3, s. 7.

(*g*) *Ex parte* Pye, 18 Ves. 150.

(*h*) 4 De G. F. & J. 274.

Court will not give effect to it by applying another of those modes. If it is intended to take effect by transfer, the Court will not hold the intended transfer to operate as a declaration of trust, for then every imperfect instrument would be made effectual by being converted into a perfect trust" (*i*). In accordance with this principle, an imperfect assignment of furniture by a husband to his wife by letters was held void in a recent case (*k*).

What must be shown, in order to support a voluntary deed as against settlor.

In order to support a voluntary deed against the settlor, the parties claiming under it must be able to show that he understood what he was doing, and this is particularly the case if the settlor was young or otherwise inexperienced in business at the time when he made the settlement, or if the deed contains unusual provisions (*l*). It has been sometimes supposed to be the duty of the solicitor who prepares a voluntary deed to advise the insertion of a power of revocation in all cases, and that the want of such a power, unless by the express direction of the solicitor, invalidates the deed (*m*). But there is no such general rule. It depends on the circumstances, whether such a power should be recommended or not; in many cases it would be proper, while in others it would defeat the very object for which the deed is executed (*n*). All that the Court has to be satisfied of is that the settlement, whether it contains a power of revocation or not, is the free determined act of the party making it,

Whether a power of revocation should be inserted.

(*i*) See also Warriner *v.* Rogers, L. R. 16 Eq. 340; Richards *v.* Delbridge, 18 Eq. 11; Moore *v.* Moore, *ib.* 474. The cases of Airey *v.* Hall, 2 Sm. & Gif. 315; Richardson *v.* Richardson, L. R. 3 Eq. 686; Morgan *v.* Malleson, *ib.* 10 Eq. 475, must be considered as overruled.

(*k*) *Re* Breton's Estate, 17 C. D. 416. In this case Hall, V.-C., commented on and declined to follow Baddeley *v.* Baddeley, 9 C. D. 113; and Fox *v.* Hawks, 13 C. D. 822, as being inconsistent with Milroy *v.* Lord.

(*l*) Cooke *v.* Lamotte, 15 Beav. 235; Prideaux *v.* Lonsdale, 1 D. J. & S. 433; Phillips *v.* Mullings, L. R. 7 Ch. App. 244. But the Court does not consider the propriety or impropriety of the provisions, except as bearing on the question whether the settlor knew what he was doing. Dutton *v.* Thompson, 23 C. D. 278.

(*m*) Coutts *v.* Acworth, L. R. 8 Eq. 558; Wollaston *v.* Tribe, 9 Eq. 44; Everitt *v.* Everitt, 10 Eq. 405.

(*n*) Prideaux *v.* Lonsdale. 1 D. J. & S. 433; Toker *v.* Toker, 3 D. J. & S. 487; Hall *v.* Hall, L. R. 8 Ch. App. 430.

and the absence of advice as to the insertion of a power of revocation is a circumstance, and a circumstance merely, to be weighed in connection with the other circumstances of the case (*o*); and in a late case it was said that, if a person of full age and sound mind executes a voluntary settlement, he cannot have the deed set aside without giving some substantial reason why the transaction should not stand, and the fact that the deed contains no power of revocation will not throw upon the grantee the onus of supporting it (*p*).

In a case where a young man made a voluntary settlement in favour of himself, his wife, and children, with an ultimate trust in default of issue for his next of kin, the Court upheld the settlement on the whole, but directed that it should be rectified by giving to the settlor a general power of appointment in default of issue (*q*).

Voluntary assignment to trustees for benefit of creditors revocable,

A voluntary assignment of property to trustees in trust for the benefit of creditors who do not execute and are not privy to the deed, operates merely as a power or mandate to the trustees, which may be revoked by the debtor at any time (*r*).

unless communicated to, and acted on by creditors.

But if the disposition is communicated to creditors who, on the faith of it, forbear to sue the debtor, the trust becomes irrevocable as against them, while as against other creditors, to whom it has not been communicated, it remains revocable (*s*).

Doctrine does not apply to provision for creditors coming into effect after settlor's death.

The doctrine does not apply to a provision for creditors coming into operation after the settlor's death. Thus, in a case where by a voluntary deed lands were limited to uses in strict settlement, including the limitation to trustees of a term to commence at the settlor's death in trust to accumulate the rents in order to raise a fund for payment of the mortgages charged on the estate, it was held that the mortgagees were

(*o*) *Per* Turner, L. J., in Toker *v.* Toker, 3 D. J. & S. 491.

(*p*) Henry *v.* Armstrong, 18 C. D. 668.

(*q*) James *v.* Couchman, 29 C. D. 212.

(*r*) Garrard *v.* Lord Lauderdale, 2 R. & M. 451; Acton *v.* Woodgate, 2 M. & K. 492.

(*s*) Johns *v.* James, 8 C. D. 744.

cestuis que trust, and consequently that the trust could not be put an end to by a person who by executing a disentailing deed had become owner in fee simple in possession, subject to the term (*t*).

V. *Stamps on settlements.*

Stamps on settlements.

By the Stamp Act, 1891 (*u*), the following stamp duties are made payable under the head of "settlement" in the schedule :—

Any instrument, whether voluntary, or upon any good or valuable consideration, other than a bonâ fide pecuniary consideration, whereby any definite and certain principal sum of money (whether charged or chargeable on lands or other hereditaments or heritable subjects, or not, or to be laid out in the purchase of lands or other hereditaments or heritable subjects or not), or any definite and certain amount of stock, or any security, is settled, or agreed to be settled, in any manner whatsoever.

	£	*s.*	*d.*
For every £100, and also for any fractional part of £100, of the amount or value of the property settled, or agreed to be settled - -	0	5	0

Exemption.

Instrument of appointment relating to any property in favour of persons specially named or described as the objects of a power of appointment where duty has been duly paid in respect of the same property upon the settlement creating the power, or the grant of representation of any will or testamentary instrument creating the power.

As settlements frequently contain covenants for payment of an annuity, it will be useful to mention that under the same Act

(*t*) *Re* Fitzgerald's Settlement, 37 C. D. 18.

(*u*) 54 & 55 Vict. c. 39.

a bond, covenant, or other instrument for payment of an annuity, is charged as follows:—

(1) Being the only or principal or primary security for any annuity (except upon the original creation thereof by way of sale or security and except a superannuation annuity), or of any sum or sums of money at stated periods, not being interest for any principal sum secured by a duly stamped instrument, nor rent reserved by a lease or tack:

For a definite and certain period, so that the total amount to be ultimately payable can be ascertained.	The same *ad valorem* duty as a bond or covenant for such total amount.

For the term of life, or any other indefinite period:

	£	s.	d.
For every £5, and also for any fractional part of £5 of the annuity or sum periodically payable - -	0	2	6

(2) Being a collateral, or auxiliary, or additional or substituted security for any of the above-mentioned purposes where the principal or primary instrument is duly stamped:

Where the total amount to be ultimately payable can be ascertained	The same *ad valorem* duty as a bond or covenant of the same kind for such total amount.

In any other case:

	£	s.	d.
For every £5, and also for any fractional part of £5 of the annuity or sum periodically payable - - - -	0	0	6

And the Act contains the following provisions relating to stamps on settlements:—

Settlement of policy or security.

Sect. 104. Where any money which may become due or payable upon any policy of insurance, or upon any security not being a marketable security, is settled or agreed to be settled, the instrument whereby the settlement is made or

agreed to be made, is to be charged with *ad valorem* duty in respect of that money.

Provided as follows:—

Proviso as to policies.

(1) Where in the case of a policy of insurance no provision is made for keeping up the policy, the *ad valorem* duty is to be charged only on the value of the policy at the date of the instrument.

(2) If in any such case the instrument contains a statement of the said value, and is stamped in accordance with the statement, it is, so far as regards the policy, to be deemed duly stamped, unless or until it is shown that the statement is untrue, and that the instrument is in fact insufficiently stamped.

Settlements when not to be charged as securities.

Where reversionary interest settled, exemption as regards annual sum payable in meantime.

Sect. 105. (1) An instrument chargeable with *ad valorem* duty as a settlement in respect of any money, stock, or security, is not to be charged with any further duty by reason of containing provision for the payment or transfer of the money, stock, or security, or by reason of containing, where the money, stock, or security is in reversion, or is not paid or transferred upon the execution of the instrument, provision for the payment by the person entitled in possession to the interest or dividends of the money, stock, or security, during the continuance of such possession, of any annuity or yearly sum not exceeding interest at the rate of £4 per cent. per annum upon the amount or value of the money, stock, or security.

Where several instruments, one only to be charged with *ad valorem* duty.

Sect. 106. (1) Where several instruments are executed for effecting the settlement of the same property, and the *ad valorem* duty chargeable in respect of the settlement of the property exceeds ten shillings, one only of the instruments is to be charged with the *ad valorem* duty.

(2) Where a settlement is made in pursuance of any previous agreement upon which *ad valorem* settlement duty exceeding ten shillings has been paid in respect of any property, the settlement is not to be charged with *ad valorem* settlement duty in respect of the same property.

(3) In each of the aforesaid cases, the instruments not chargeable with *ad valorem* duty are to be charged with the duty of ten shillings.

Penalty for not stamping a settlement within the prescribed period.

If a settlement is not stamped within 30 days after it is first executed, or if executed abroad, after it is first received in the United Kingdom, the settlor is liable to forfeit £10 (*y*).

The expression "definite and certain" applies not to the interest of the settlor but to the amount of the money, and the *ad valorem* settlement is payable although the settlor's interest is only contingent (*z*).

No. I.

OF STOCK BELONGING TO INTENDED HUSBAND.

SETTLEMENT *of* PERSONAL ESTATE *belonging to the intended* HUSBAND, *for the benefit of the* HUSBAND *and* WIFE *successively for life, and after the death of the* SURVIVOR, *for the* ISSUE *of the marriage, with usual clauses.*

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*intended husband*), of the first part, C. D. of, &c. (*intended wife*), of the second part, and E. F. of, &c., G. H. of, &c., and I. K. of, &c. (*trustees*) (*a*), of the third part: WHEREAS a marriage is intended shortly to be solemnized between the said A. B. and the said C. D.: AND WHEREAS the said A. B. has before the execution of these presents transferred the sum of £—— two and three quarters per Cent. Consolidated Stock into the names of the said E. F., G. H., and I. K., in the books of the Governor and Company of the Bank of England, and has assigned the sum of £—— Debenture Stock of the —— Railway Company unto the said E. F., G. H., and I. K. by a proper deed for that purpose: NOW THIS INDENTURE WITNESSETH, that in consideration of the said

Recital of intended marriage.

Transfer of stocks to trustees.

Witnessing part.

(*y*) Sect. 15.
(*z*) Onslow *v.* Commissioners of Inland Revenue, (1891) 1 Q. B. 239.
(*a*) The number of trustees in a settlement varies from two to four. In the above Precedent there are three, but it can be easily adapted to the case of two or four trustees.

OF STOCK BELONGING TO INTENDED HUSBAND.

intended marriage, IT IS HEREBY AGREED AND DECLARED that the said E. F., G. H., and I. K. (hereinafter called "the trustees"), shall stand possessed of the said sum of £—— consolidated stock, and the said sum of £—— railway debenture stock: IN TRUST for the said A. B., until the said intended marriage: AND after the said intended marriage IN TRUST that the trustees (*b*) shall either retain the same, or, with the consent in writing of the said A. B. and C. D. during their joint lives, and of the survivor of them during his or her life, and after the decease of such survivor, at the discretion of the trustees, sell the same, and invest the moneys produced by such sale, with power from time to time with such consent, or at such discretion as aforesaid, to vary the investments, and shall stand possessed of the said consolidated stock and debenture stock, and the investments for the time being representing the same (hereinafter called the trust funds): IN TRUST to pay the income thereof to the said A. B. during his life, and after his decease to the said C. D. during her life, and after the decease of the survivor of the said A. B. and C. D., IN TRUST for such child, children, or remoter issue (*c*) of the said intended marriage, at such age or time, or ages or times (not being earlier as to any object of this power than his or her age of twenty-one years or day of marriage), in such shares, if more than one, upon such conditions, and in such manner, as the said A. B. and C. D. shall by any deed or deeds jointly appoint: AND IN DEFAULT of such appointment, and so far as any such appointment shall not extend, then as the survivor of them the said A. B. and C. D. shall by any deed or deeds, or by his or her will, appoint: AND IN DEFAULT of such appointment, and so far as any such appointment shall not extend, IN TRUST for all the children of the said intended marriage who, being sons, shall attain the age of

Trustees shall stand possessed of stocks, in trust for intended husband until marriage.

After marriage to retain present investments, or change same.

To pay income to husband and wife successively for life,

in trust for the issue of marriage as husband and wife or survivor shall appoint.

And in default of any appointment for sons attaining twenty-one, and daughters attaining that

(*b*) It was formerly usual to provide that the trust might be exercised by the survivors and survivor of the trustees, and the executors or administrators of such survivor. As regards the survivors and survivor, this is now provided for by the Conveyancing Act, 1881, s. 38, and as regards the executors or administrators of the last survivor, it is generally better, if all the trustees die, to appoint new ones under the statutory power.

(*c*) This power is good, although the class is not limited in terms to issue born within the period allowed by the rule against perpetuities, but it must be exercised consistently with that rule. Routledge *v.* Dorrill, 2 Ves. jun. 357.

OF STOCK BELONGING TO INTENDED HUSBAND.

twenty-one years, or, being daughters, shall attain that age or marry under that age, in equal shares, and if there shall be but one such child, then the whole to be in trust for that one child: BUT so, nevertheless, that no child who or any of whose issue shall take any part of the trust funds under any such appointment as aforesaid shall be entitled to any share of the unappointed part of the trust funds, without bringing the share or shares appointed to him or her, or to his or her issue, into hotchpot, and accounting for the same accordingly, unless the persons or person making such appointment shall thereby direct the contrary: AND if there shall be no child of the said intended marriage, who being a son shall attain the age of twenty-one years, or being a daughter shall attain that age or marry under that age, then, IN TRUST for the said A. B. absolutely: AND IT IS HEREBY ALSO DECLARED, that the trustees may at any time or times, with the consent in writing of the said A. B. and C. D. during their joint lives, and of the survivor of them during his or her life, and after the decease of such survivor, at the discretion of the trustees, raise any part or parts not exceeding together one moiety of the vested or expectant share of any child or remoter issue of the said intended marriage under these presents, or under any such appointment as aforesaid, and may apply the same for his or her advancement, preferment, or benefit, as the trustees shall think fit. [AND IT IS HEREBY ALSO DECLARED, that all moneys liable to be invested under these presents may be invested in any stocks, funds, or securities authorized by law for trust funds or in the purchase of inscribed stock of any British colony or on mortgage of any leasehold houses or land in England or Wales held for any term having at least sixty years to run at the time of the investment, or of any life interest in real or personal property, together with a policy or policies of assurance on the life of the person for whose life such interest shall be holden (*d*)]. AND IT IS HEREBY

age or marrying under that age, equally.

Hotchpot clause.

Advancement clause.

Investments clause.

(*d*) The clause in brackets will be omitted if the parties are satisfied with the range of investments allowed by law. See pp. 191 to 193. If a still more comprehensive power is desired, the following, either with or without modifications, is suggested:—

AND IT IS ALSO DECLARED that all moneys liable to be invested under these presents, may be invested in any stocks,

OF STOCK BELONGING TO INTENDED HUSBAND.

ALSO DECLARED that the power of appointing new trustees conferred by statute shall, for the purposes of these presents, be vested in the said A. B. and C. D. during their joint lives, and in the survivor of them during his or her life: AND IT IS HEREBY ALSO DECLARED that the trustees may, if they think fit, instead of acting personally, employ and pay a solicitor, or any other person, to transact any business or do any act required to be done in connection with the trust, including the receipt and payment of money, and that any trustee of these presents being a solicitor, or other person engaged in any profession or business, may be so employed, and shall be entitled to charge and be paid all professional and other charges for any business or act done by him in connection with the trust, including any act which a trustee, not being a solicitor or other person engaged

Power to appoint new trustees.

Power to solicitor trustee to charge.

Power to trustees to employ solicitors, &c. and for trustee, if employed, to charge.

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funds, or securities authorized by law for trust funds, or in any stocks, funds, or securities of any British colony or dependency, or of any foreign state, or in or upon the stock, shares, or securities of any railway or other company, whether in the United Kingdom or in any British colony or dependency, or in any foreign country, or upon the securities of any municipal or other corporation, company, or public body, or upon real or heritable or leasehold securities in any part of the United Kingdom, or in any British colony or dependency, or upon the security of any life interest in real or personal property, together with a policy or policies of assurance on the life or lives of the person or persons for whose life or lives such interest is holden.

The following power to lend on contributory mortgages may be inserted, if wished:—

AND IT IS ALSO DECLARED that in lending money on any mortgage security authorized by the said Act or by these presents, the same may be lent in conjunction with money advanced by any other person or persons by way of contributory loan, and in such case the security may be taken in the joint names of the several contributories or any two or more of them, or in the joint names of any two or more persons to be nominated in that behalf by the several contributories, or such other arrangement may be made in relation thereto as the trustees may think fit.

Power to lend on contributory mortgages.

OF STOCK BELONGING TO INTENDED HUSBAND.

as aforesaid, could have done personally (*e*). PROVIDED ALWAYS, and it is hereby lastly declared, that if the said intended marriage shall not be solemnized within twelve calendar months from the date hereof these presents shall be void, and the stocks hereby settled shall be re-transferred to the said A. B.

Settlement to be void if marriage is not solemnized within twelve months.

IN WITNESS, &c.

No. II.

OF STOCK BELONGING TO WIFE.

SETTLEMENT *of* STOCK *belonging to the intended* WIFE, *the* INCOME *to be paid to the* WIFE *for her life for her separate use without power of anticipation, and after her death to the* HUSBAND; TRUSTS *for* ISSUE *and* USUAL CLAUSES; AGREEMENT *for settling other* PRESENT *and* FUTURE PROPERTY *of the* WIFE.

Parties.

THIS INDENTURE, made the —— day of ——, 18—, BETWEEN A. B. of, &c. (*intended husband*), of the first part, C. D. of, &c. (*intended wife*), of the second part, and E. F. of, &c., G. H. of, &c., and I. K. of, &c. (*trustees*), of the third part:

Recital of intended marriage.

WHEREAS a marriage is intended shortly to be solemnized between the said A. B. and the said C. D.: AND WHEREAS,

Agreement for settlement.

upon the treaty for the said intended marriage it was agreed that the sum of £——, two and three quarters per Cent. Consolidated Stock belonging to the said C. D., [and such other present and future property (if any) of the said C. D. as is hereinafter in that behalf mentioned,] should be respectively settled upon the trusts and in the manner hereinafter expressed:

Transfer of stock to trustees.

AND for the purposes of the said intended settlement the said C. D. has transferred the said stock into the names of the said E. F., G. H., and I. K., in the books of the Governor and Company of the Bank of England:

Witnessing part.

NOW THIS INDENTURE WITNESSETH, that in consideration of the said intended

(*e*) This form is similar to one recommended in a circular issued by the Incorporated Law Society, as having been settled by an eminent conveyancer.

marriage, IT IS HEREBY AGREED AND DECLARED, that the said E. F., G. H., and I. K. (hereinafter called "the trustees") shall stand possessed of the said sum of £—— consolidated stock, IN TRUST for the said C. D., until the said intended marriage, and from and after the said marriage, IN TRUST that, &c. (*retain stock, or sell and invest, and vary investments, vide supra*, p. 293), and shall pay the income of the said stock, and the investments for the time being representing the same (hereinafter called "the trust funds"), to the said C. D. (*f*) during her life, for her separate use, and so that she shall not have power while under coverture to dispose thereof in the way of anticipation, and after the decease of the said C. D., shall pay the said income to the said A. B. (if then living), during his life, and from and after the decease of the survivor of the said A. B. and C. D. shall hold the said trust funds, IN TRUST, &c. (*Trusts for issue as husband and wife or survivor shall appoint, and in default of appointment for children, equally,—sons at twenty-one and daughters at twenty-one or marriage,—Hotchpot clause, supra*, p. 294): AND if there shall be no child of the said

OF STOCK BELONGING TO WIFE.

Trustees to hold stock in trust for wife until marriage.

To pay income to wife for life for her separate use without power of anticipation, and then to husband for life, and after death of survivor for issue.

In default of issue, then as

(*f*) It is usual to give the wife, for her separate use, the whole income of property settled by her; but sometimes it is arranged that she shall receive an annual sum only out of such income. In such a case the following trusts of income will be substituted for those in the text:—

IN TRUST that the trustees shall pay to the said C. D. during the joint lives of the said A. B. and C. D. the annual sum of £—— for her separate use, and so that she shall not have power to dispose thereof in the way of anticipation, the said annual sum to be paid by equal half-yearly payments, the first of such payments to be made at the expiration of six calendar months next after the solemnization of the said intended marriage; and if the said C. D. shall die on any day not being one of the said half-yearly days of payment, there shall be no apportionment of the current half-yearly payment: AND the trustees shall during such joint lives as aforesaid pay the surplus of the said income to the said A. B.: AND shall after the decease of such one of them the said A. B. and C. D. as shall die first pay the whole of the income of the trust funds to the survivor of them during his or her life: AND after the decease of such survivor shall stand possessed of the trust funds, IN TRUST, &c. (*as in text*).

To pay annuity to wife during joint lives, and residue of income to husband.

OF STOCK BELONGING TO WIFE.

intended marriage, who being a son shall attain the age of twenty-one years, or being a daughter shall attain that age or marry, then IN TRUST for the said C. D. absolutely if she shall survive her now intended coverture: But if she shall die during her now intended coverture, then UPON SUCH TRUSTS (*f*) as the said C. D. shall by her will appoint, and in default of such appointment, and so far as any such appointment shall not extend, IN TRUST for the person or persons who under the statutes for the distribution of the effects of intestates would on the decease of the said C. D. have been entitled thereto if she had died possessed thereof intestate and without having been married, such persons, if more than one, to take as tenants in common in the shares in which the same would have been divisible between them under the same statutes (*advancement clause*, p. 294): AND IT IS HEREBY AGREED AND DECLARED (*g*) that all real and personal property (if any) not hereinbefore settled, to which the said C. D. shall at any time during her now intended coverture (*h*) become entitled, whether in possession, reversion, or otherwise (except jewels, trinkets, ornaments of the person, plate, linen, china, furniture, pictures, prints, books, and articles of the like nature, and except also any legacy or other property acquired at one and the same time, not exceeding in amount or value the sum of £200 (*i*)), shall, so soon as circumstances will admit, and at the cost of the trust estate, be assured and transferred by the said C. D. and all other necessary and proper parties (if any) unto or otherwise vested in the trustees, UPON TRUST that the trustees shall at

wife shall by will appoint; and in default of appointment for wife if she survives.

Agreement for settling other present and future property of intended wife.

(*f*) It is not right to omit this testamentary power where the money settled belongs to the intended wife herself, except at her own wish, after having had the matter fully explained to her. But if the money is settled by her father, or some other relation, he may fairly stipulate that she shall not have a power of giving it away from the family, and in such case the power may either be omitted altogether, or a more limited power given. The following is the form of a more limited power, "In trust for such person or persons, being a brother or sister, brothers or sisters, or the issue of a brother or sister, or of brothers or sisters, of the said C. D., as she the said C. D., &c."

(*g*) This provision for settling after-acquired property will be inserted only when desired.

(*h*) It is thought unnecessary to provide for the improbable contingency of the wife having some property at the time of her marriage of which she is unaware. If she knows of any, it should be mentioned in the earlier part of the deed and the *ad valorem* duty paid on it.

(*i*) £200 is the sum usually fixed, but in many cases a higher sum would appear more reasonable.

such time or times, and in such manner as they shall think fit (but as to reversionary property not until it shall fall into possession), sell, call in, and convert into money such part or parts of the said property as shall not consist of money or of authorized investments, and shall stand possessed of such part of the said property as shall consist of authorized investments, or of money uninvested, and also of the moneys to arise from such sale, calling in, and conversion as aforesaid, upon the trusts and with and subject to the powers and provisions hereinbefore declared and contained concerning the trust funds hereby settled (*k*): And in the meantime, and so long as any property hereinbefore directed to be sold shall remain unsold, shall pay the rents and income thereof to the person or persons and in the manner to whom and in which the income of the trust funds shall for the time being be payable or applicable under the foregoing trusts (*l*): Provided always, that if any property to become vested in the trustees as aforesaid shall consist of an annuity or of the rents or income of real or personal property payable to the said C. D. during her life or the life or lives of any other person or persons only, or for any term or period determinable on her death, or on the death of any other person, such annuity, rents, or income shall not be sold unless the said C. D. shall by writing direct the sale thereof, but the said annuity, rents, or income shall, unless and until the same shall be sold, be paid and applied to the person or persons and in the manner to whom and in which the income of the trust funds shall for the time being be payable or applicable under the foregoing trusts (*l*): And it is hereby declared, that, &c. (*Investment and appointment of new trustees clauses, supra*, pp. 294, 295): Provided always, and it is hereby lastly declared, that if the said intended marriage shall not be solemnized within twelve calendar months after the date of these presents, these presents shall be void, and the stock hereby settled shall be re-transferred to the said C. D.

OF STOCK BELONGING TO WIFE.

Settlement to be void if marriage not solemnized within twelve months.

In witness, &c.

(*k*) If the wife only receives an annuity out of the income of the wife's trust funds, add here, "but so as not to increase the said annuity of £—— hereinbefore made payable to the said C. D. during the joint lives of the said A. B. and C. D."

(*l*) Add here, if required, "but so as not to increase the said annuity."

No. III.

SETTLEMENT OF A POLICY OF ASSURANCE EFFECTED ON THE LIFE OF THE INTENDED HUSBAND.

SETTLEMENT *of a* POLICY *of* ASSURANCE (*m*) *effected on the* LIFE *of the intended* HUSBAND; *Provision enabling him to* PAY *to the* TRUSTEES *a* SUM *equal to the* POLICY, *in which case the* POLICY *is to be held in* TRUST *for him absolutely;* COVENANTS *by the* HUSBAND *for keeping up the insurance.*

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*intended husband*), of the first part, C. D. of, &c. (*intended wife*), of the second part, and E. F. of, &c., G. H. of, &c., and I. K. of, &c. (*trustees*), of the third part: WHEREAS a marriage is intended shortly to be solemnized between the said A. B. and the said C. D.: AND WHEREAS the said A. B. is possessed of a policy of assurance on his life for the sum of £——, effected with the —— Assurance Society, dated ——, and numbered ——, subject to the payment of the annual premium of £——; AND upon the treaty of the said intended marriage it was agreed that the said A. B. should settle the said policy upon the trusts and in the manner hereinafter expressed: NOW THIS INDENTURE WITNESSETH, that in consideration of the said intended marriage, THE said A. B. as settlor (*n*) hereby assigns unto the said E. F., G. H., and I. K. (hereinafter called "the trustees"), THE hereinbefore recited

Marriage agreed on.

Agreement to settle policy.

Assignment of policy to trustees.

Notice to be given to office.

Effect of enactment that policy shall confer no right to sue unless stamped.

(*m*) See 30 & 31 Vict. c. 144. Notice of this deed should be given to the assurance society pursuant to 30 & 31 Vict. c. 144.

The stamp on this deed will be 5*s.* per £100 on the sum assured. By the Stamp Act, 1891, s. 118, it is provided that no assignment of a policy of life assurance shall confer on the assignee any right to sue, or give a valid discharge, for the money assured thereby, unless the assignment is duly stamped, and that no payment shall be made to any person claiming under such assignment unless the same is duly stamped. And if any payment is made in contravention of this clause, the person by whom the payment is made is liable for the penalty. It is apprehended that this enactment does not invalidate the assignment, but merely prevents the assignee from suing for the money until it is stamped. Consequently, if A. assigns the policy first to B. and then to C., but the assignment to B. is not stamped until after the assignment to C., B. is not on that account postponed to C.

(*n*) These words carry with them an implied covenant for further assurance. See Conveyancing Act, 1881, s. 7 (E).

SETTLEMENT OF A POLICY OF ASSURANCE EFFECTED ON THE LIFE OF THE INTENDED HUSBAND.

policy of assurance, and the said sum of £—— thereby assured, and all other moneys to become payable thereunder by way of bonus or otherwise, To HOLD the same unto the trustees, IN TRUST for the said A. B. until the said intended marriage, AND FROM AND AFTER the said marriage, UPON TRUST that the trustees shall upon the death of the said A. B. receive the moneys to become payable under the said policy, and with the consent in writing of the said C. D. if then living, or if she shall be then dead, at the discretion of the trustees, invest the said moneys or so much thereof as shall remain after paying the expenses of and incidental to the obtaining payment of the same, with power from time to time with such consent or at such discretion as aforesaid to vary the investments: AND SHALL stand possessed of the said policy moneys, and the investments for the time being representing the same (hereinafter called "the trust funds"): IN TRUST to pay the income thereof to the said C. D., if she shall survive the said A. B., during her life: And after the decease of the survivor of the said A. B. and C. D., IN TRUST, &c. (*Trust for issue as husband and wife or survivor shall appoint, and in default of appointment for children, equally,—sons at twenty-one, and daughters at twenty-one, or marriage,—Hotchpot clause,—Ultimate trust in default of issue for husband, supra*, pp. 293, 294): PROVIDED ALSO, that the trustees may at any time or times with the consent in writing of the said C. D. during her life, or after her decease at their own discretion, raise, &c. (*Advancement clause*, p. 294); AND the said A. B. hereby covenants with the trustees, that he the said A. B. will not at any time do any act or commit any default whereby the said policy of assurance may be rendered void or voidable (*o*), and will, in case the said policy or any new policy to be effected as hereinafter mentioned, shall by any means become void, forthwith at his own cost effect a new policy on his life in lieu of such void policy, in the names of the trustees in the sum of £—— at least, and will duly and regularly pay the premiums and other sums of money (if any) which shall from time to time become payable for keeping on foot the said policy hereby assigned, and every or any such new policy as aforesaid, and

In trust for settlor until marriage and afterwards to receive and invest policy moneys when payable.

Trusts for husband, wife, and issue.

Advancement clause.

Covenants by husband to keep up policy;

to effect new policy if it shall become void;

to pay premiums;

to deliver receipts.

(*o*) See Dormay *v.* Borrodaile, 10 Beav. 335, as to the effect of these negative words.

SETTLEMENT OF A POLICY OF ASSURANCE EFFECTED ON THE LIFE OF THE INTENDED HUSBAND.

will on demand deliver to the trustees the receipt for every such premium: PROVIDED ALWAYS, that it shall not be obligatory on the trustees to enforce the performance of any of the covenants hereinbefore contained on the part of the said A. B. in reference to the said policy of assurance, unless they shall think fit so to do, nor shall it be considered a breach of trust for the trustees to permit the said covenants to remain unperformed, or to permit any such policy as aforesaid to become void through any means whatever: AND IT IS AGREED AND DECLARED that if any bonus shall at any time hereafter be declared on the said policy, and an option shall be given to the holder of the said policy either to have the amount of such bonus added to the sum assured by the said policy, or to have a present payment of money or a reduction of future premiums in lieu thereof, then and in such case the trustees shall exercise such option in such manner as the said A. B. shall direct, and if any such bonus shall be accepted, and the said A. B. shall at any time afterwards request the trustees to surrender the same to the said assurance office in consideration of a present payment of money or a reduction of future premiums, then and in every such case the trustees shall comply with such request and act accordingly, and if in any such case as aforesaid a present payment of money shall be accepted such money shall belong to the said A. B. (*p*): PROVIDED ALSO, and it is hereby agreed and declared, that it shall be lawful for the said A. B. at any time during his life to redeem the said policy of assurance by paying to the trustees the sum of £——, and in such case the said policy shall be reassigned to the said A. B. at his expense freed and discharged from the trusts, powers, and provisions hereinbefore declared and contained concerning the same, and the trustees shall stand possessed of the said sum of £—— paid to them by the said A. B. as aforesaid upon the trusts and with and subject to the powers and provisions hereinbefore declared and contained concerning the moneys to be received by virtue of the said policy of assurance, but so that during the joint lives of the said A. B. and C. D., and the life of the survivor of them,

Proviso relieving trustees from responsibility as to policy.

Power to settlor to accept reduction of premium in lieu of bonus.

Power to husband to pay to trustees a sum of money in redemption of policy.

Trusts of money to be so paid.

(*p*) This proviso must not be considered as a common form in a settlement of a policy of assurance. It is supposed to have been specially stipulated for in this particular case.

every investment or variation of investment of the said sum of £—— be made with their, his, or her consent in writing, and that the income of the said sum of £—— and the stocks, funds, and securities in or upon which the same shall be invested, shall be paid to the said A. B. during his life, and so also that the power hereinbefore contained enabling the trustees to apply moneys for the advancement of any child or remoter issue of the said intended marriage, may be exercised during the joint lives of the said A. B. and C. D., or the life of the survivor of them, by their, his, or her direction in writing (*Investment and appointment of new trustees clauses, supra*, pp. 294, 295): PROVIDED ALWAYS, and it is hereby lastly declared, that if the said intended marriage shall not be solemnized within twelve calendar months from the date of these presents, then and in such case these presents shall be void, and the said policy of assurance shall be re-assigned to the said A. B. for his absolute use.

SETTLEMENT OF A POLICY OF ASSURANCE EFFECTED ON THE LIFE OF THE INTENDED HUSBAND.

Settlement to be void if marriage not solemnized within twelve months.

IN WITNESS, &c.

No. IV.

APPOINTMENT *by* FATHER *and* MOTHER *to a* DAUGHTER *of a* SHARE *of* SETTLED PERSONAL ESTATE *in* CONTEMPLATION *of* MARRIAGE.

APPOINTMENT OF SHARE TO DAUGHTER.

TO ALL TO WHOM THESE PRESENTS SHALL COME, M. D. of, &c., and N., his wife (*father and mother of intended wife*), SEND GREETING: WHEREAS by an indenture dated, &c., and made between, &c. (being the settlement made in consideration of the marriage then intended, and which was shortly afterwards solemnized, between the said M. D. and N., his wife, then N. O.), it was agreed and declared that the said (*trustees of that settlement*) should stand possessed of the trust funds therein mentioned, upon the trusts therein declared during the lives of the said M. D. and N. O. and the life of the survivor of them, and after the decease of such survivor, IN TRUST for all

Recital of settlement on marriage of father and mother of intended wife.

APPOINTMENT OF SHARE TO DAUGHTER.

or such one or more of the children and remoter issue of the said intended marriage, at such ages or times, age or time, in such shares, if more than one, upon such conditions, and in such manner as the said M. D. and N. O. should by any deed or deeds jointly appoint: AND WHEREAS the funds subject to the trusts of the said indenture of settlement now consist of the following particulars (that is to say), the sum of £——, $2\frac{3}{4}$ per Cent. Consolidated Stock standing in the names of W. X. and Y. Z., the present trustees of the said indenture, in the books of the Governor and Company of the Bank of England, and the sum of £—— sterling invested on mortgage of real estate in the names of the same trustees: AND WHEREAS there are five children now living of the said M. D. and N., his wife: AND WHEREAS a marriage is intended shortly to be solemnized between C. D. (one of the said children) (*q*) and A. B. of, &c., Esquire: AND WHEREAS the said M. D. and N., his wife, are desirous of making such appointment to or in favour of the said C. D. as is hereinafter expressed: NOW THESE PRESENTS WITNESS, that the said M. D. and N., his wife, in exercise of the power for this purpose given to them by the said indenture of settlement as aforesaid, and of all other powers (if any) them hereunto enabling, hereby appoint, that if the said intended marriage shall be solemnized before the expiration of twelve calendar months from the date of these presents, the trustees for the time being of the said indenture of settlement shall, from and after the decease of the survivor of the said M. D. and N., his wife, stand possessed of one equal fifth part or share of and in the trust moneys, stocks, funds, and securities for the time being subject to the trusts of the said indenture of settlement, IN TRUST for the said C. D. absolutely (*r*).

Present state of settled trust funds.

That there are five children.

Intended marriage of daughter, one of such children.

Witnessing part.

Father and mother appoint one-fifth of settled trust funds to intended wife.

IN WITNESS, &c.

(*q*) Add here, if the daughter is an infant, "who is of the age of —— years."

(*r*) It is assumed that the settlement contains a hotchpot clause. If it does not, one should be added to this appointment.

No. V.

REVERSIONARY PERSONAL ESTATE AND POLICY.

SETTLEMENT *of* REVERSIONARY PERSONAL *estate* APPOINTED *to the intended* WIFE *by the last Precedent and of a* POLICY *of* ASSURANCE *on the life of the intended* HUSBAND; *The* FATHER *of intended Wife* COVENANTS *to pay an* ANNUAL SUM *until her property falls into possession.*

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*intended husband*), of the first part, C. D., spinster, one of the daughters of M. D. of, &c., Esquire, and N., his wife (*intended wife*), of the second part, the said M. D. of the third part, and E. F. of, &c., G. H. of, &c., and I. K. of, &c. (*trustees*), of the fourth part: WHEREAS a marriage is intended shortly to be solemnised between the said A. B. and the said C. D.: AND WHEREAS under or by virtue of an indenture dated, &c., and made, &c. (being a settlement made previously to the marriage of the said M. D. and N., his wife, then N. O.), and a deed poll under the hands and seals of the said M. D. and N., his wife, bearing even date with these presents, the said C. D. will upon her said marriage, if the same takes place within twelve calendar months from the date of these presents, become entitled in reversion expectant upon the decease of the survivor of the said M. D. and N., his wife, to one equal fifth part or share of the trust funds subject to the trusts of the said indenture of settlement, which trust funds now consist of the sum of £—— $2\frac{3}{4}$ per Cent. Consolidated Stock standing in the names of W. X. and Y. Z. (the present trustees of the said indenture), in the books of the Governor and Company of the Bank of England, and a sum of £—— invested on mortgage of real estate in the names of the same trustees (*s*): AND WHEREAS the said A. B., &c. (*recite policy, supra*, p. 300): AND WHEREAS

Parties.

Recital of intended marriage.

That intended wife is entitled to reversionary property.

Agreement for settlement.

(*s*) The present state of the reversionary trust funds should be stated, in order to show what the *ad valorem* stamp duty ought to be.

REVERSIONARY PERSONAL ESTATE AND POLICY.

upon the treaty for the said intended marriage it was agreed that such settlement should be made as is hereinafter expressed: NOW THIS INDENTURE WITNESSETH, that in consideration of the said intended marriage, the said C. D. as settlor hereby assigns unto the said E. F., G. H., and I. K. (hereinafter called "the trustees"), ALL THAT the one-fifth part or share to which the said C. D. will, upon her said marriage, become entitled in reversion expectant as aforesaid of and in the said sum of £—— Consolidated Stock, and the said sum of £—— invested upon mortgage security respectively, or other the trust moneys, stocks, funds, and securities for the time being subject to the trusts of the said indenture of settlement of the —— day of ——: TO HOLD the same unto the trustees, UPON TRUST that they shall require the transfer or payment thereof to them when and so soon as the same shall fall into possession, and shall either retain the same in the then state of investment thereof (if any), or with the consent in writing of the said A. B. and C. D. during their joint lives, and of the survivor of them during his or her life, and after the decease of such survivor at the discretion of the trustees convert the same or any part thereof into money, and shall, with such consent or at such discretion as aforesaid, invest the moneys which shall come to their hands by the ways and means aforesaid, with power from time to time, with the like consent or at the like discretion, to vary the investments, and shall stand possessed of the said part or share of trust funds hereby assigned and the investments representing the same (hereinafter called "the wife's trust funds"): IN TRUST to pay the income thereof to the said C. D. during her life for her separate use, and so that she shall not have power while under coverture to dispose thereof in the way of anticipation, and after her decease, IN TRUST to pay the said income to the said A. B., in case he shall survive the said C. D., during his life, and after the decease of the survivor of the said A. B. and C. D. upon the trusts hereinafter declared concerning the same: AND THIS INDENTURE ALSO WITNESSETH, that in consideration of the said intended marriage, the said A. B. as settlor hereby assigns unto the trustees, THE hereinbefore recited policy of assurance, and the said sum of £—— thereby assured, and all other moneys to become payable there-

Witnessing part.

Intended wife assigns her reversionary share of trust funds to trustees.

Upon trust to require transfer of same when it falls into possession, and to invest.

To pay income to intended wife for life for her separate use without power of anticipation, and after her decease to intended husband for life.

Assignment of policy to trustees

REVERSIONARY PERSONAL ESTATE AND POLICY.

under by way of bonus or otherwise, To HOLD the same unto the trustees, UPON TRUST that they shall, upon the death of the said A. B., receive the moneys assured by and to become payable under the said policy, and shall out of the said moneys in the first place pay the expenses of and incidental to the obtaining payment thereof, and shall, with the consent in writing of the said C. D., if living, and after her death at the discretion of the trustees, invest the residue of the said moneys, with power from time to time, with the like consent or at the like discretion, to vary the investments, and shall pay the income arising from such investments to the said C. D. during her life if she shall survive the said A. B.: AND IT IS HEREBY DECLARED that after the decease of the survivor of the said A. B. and C. D., the trustees shall stand possessed of the said policy moneys, and the investments representing the same (hereinafter called "the husband's trust funds"), and also of the wife's trust funds: IN TRUST for, &c. (*Trusts for issue of intended marriage, as husband and wife or survivor shall appoint, and in default of appointment for children equally, sons at twenty-one, and daughters at twenty-one or marriage—Hotchpot clause, supra*, pp. 293, 294): AND if there shall be no child of the said intended marriage, who being a son shall attain the age of twenty-one years, or being a daughter shall attain that age or marry, then as to the husband's trust funds, IN TRUST for the said A. B. absolutely, and as to the wife's trust funds, IN TRUST, &c. (*for wife or her appointees by will or next of kin, advancement clause, supra*, p. 294): AND, &c. (*covenant by husband to keep up policy, supra*, p. 301): PROVIDED ALWAYS, and it is hereby declared, that it shall be lawful for the trustees at their discretion at any time or times to apply the income of any part of the trust funds for the time being subject to the trusts of these presents, or (if necessary) any part of the principal thereof, in or towards the payment of any sums which may be required for keeping on foot the said policy hereby assigned, or for effecting or keeping on foot any such new policy or policies as aforesaid, by reason of any breach of the covenant of the said A. B. hereinbefore in that behalf contained: PROVIDED ALSO, and it is hereby declared, that it shall not be obligatory on the trustees to enforce the performance of any of the covenants

upon trust to receive the policy moneys, and after paying expenses to invest, and pay income to wife for her life.

Trusts for issue.

Power to trustees to apply income or corpus of trust fund in keeping up policy.

Proviso for indemnity of trustees in respect of policy.

REVERSIONARY PERSONAL ESTATE AND POLICY.

hereinbefore contained on the part of the said A. B. in reference to the said policy of assurance, nor to apply any part of the income or principal of the said trust funds in or towards the keeping on foot or effecting any such policy as aforesaid, unless the trustees shall think fit so to do, nor shall it be considered a breach of trust for the trustees to permit the said covenants to remain unperformed, or to permit any such policy as aforesaid to become void through any means whatsoever: AND THIS INDENTURE ALSO WITNESSETH, that in consideration of the said intended marriage, the said M. D. hereby covenants with the trustees that he the said M. D., his heirs, executors, or administrators will during the joint lives of the said M. D. and N., his wife, and the life of the survivor of them, if the said A. B. and C. D., or either of them, or any issue of the said intended marriage, shall so long live, pay to the trustees the annual sum of £——, by equal half-yearly payments, the first of such payments to be made at the expiration of six calendar months next after the solemnization of the said intended marriage, UPON TRUST that the said annual sum of £—— shall be paid and applied by the trustees to the person or persons and in the manner to whom and in which the income of the wife's trust funds would for the time being be payable or applicable under the trusts hereinbefore declared if the same had fallen into possession (*Agreement to settle after-acquired property of wife, investment and other clauses, supra*, p. 298): [AND IT IS HEREBY ALSO DECLARED that the trustees of these presents may approve of and allow the accounts of the trustees for the time being of the hereinbefore recited indenture of settlement, and also the accounts of any other trustees or persons having in their possession or under their control or being otherwise liable to account for any property of the said C. D. hereby agreed to be brought into settlement, and may give and execute to such trustees and other persons as aforesaid valid and effectual releases in respect of the said share hereby assigned by the said C. D. or in respect of any other property of her the said C. D. hereby agreed to be brought into settlement, and if any question shall arise with respect to the amount or value of the said share or other property or otherwise in relation thereto, the trustees of these presents may arrange and settle every or any such question under the advice of counsel or otherwise in

Covenant by father of intended wife to pay annual sum to trustees.

Power to trustees to settle accounts.

such manner as they shall in their absolute discretion think fit, without being answerable for any loss arising thereby (*u*)].

REVERSIONARY PERSONAL ESTATE AND POLICY.

In witness, &c.

No. VI.

SETTLEMENT *of* Reversionary Property *and a* Policy *of* Assurance *as in the* last Precedent, *except that the intended* Wife *is an* Infant (*x*).

BY HUSBAND AND WIFE, LATTER BEING AN INFANT.

THIS INDENTURE, made the —— day of ——, Between A. B. of, &c. (*intended husband*), of the first part, C. D. of, &c., being an infant of the age of —— years, or thereabouts (*intended wife*), of the second part, and E. F. of, &c., G. H. of, &c., and I. K. of, &c. (*trustees*), of the third part (*Recitals as in last Precedent*): NOW THIS INDENTURE WITNESSETH, that in consideration of the said intended marriage it is hereby agreed and declared that the one-fifth part or share to which the said C. D. will upon her said marriage become entitled in reversion expectant as aforesaid of and in the trust moneys and funds held upon or subject to the trusts of the said indenture of settlement of

Parties.

Agreement that wife's reversionary share in trust funds shall be vested in trustees.

(*u*) The clause in brackets may be safely dispensed with. See Conveyancing Act, 1881, s. 37.

(*x*) When the intended wife is an infant, she is incapable of making a settlement binding on herself, except with the sanction of the Court under the Infants' Settlement Act. But it is generally desired to avoid the expense and delay of an application to the Court, and it was therefore usual, before the passing of the Married Women's Property Act, 1882, where the infant's property was personalty in possession or in reversion, to rely on the husband's covenant to settle it. Such a covenant was effectual, except in the event of the property not falling into possession during the coverture, and the wife being the survivor. It was considered at one time that the Act of 1882 had rendered a covenant by the husband ineffectual, because under sect. 3 the wife became entitled for her separate use. But it would appear from recent decisions that this view is incorrect, and that, by virtue of sect. 19, a settlement, or agreement for a settlement, whether made before or since the Act, and whether before or after marriage, has the same operation and effect as regards the wife's property as if the Act had not been passed. If so, a covenant by the husband may now be used in all cases where it would have been considered sufficient before the passing of the Act, and will have the same effect. See p. 221, *supra*.

Effect of the husband's covenant to settle the wife's property when she is an infant.

Effect of such a covenant not altered by the Act of 1882, *semble*.

BY HUSBAND AND WIFE, LATTER BEING AN INFANT.

the —— day of ——, shall, when and so soon as the same shall fall into possession, be transferred or paid by the said A. B. and C. D., and all other necessary parties unto, or otherwise vested in, the said E. F., G. H., and I. K. (hereinafter called "the trustees"), to be held by them upon the trusts following, that is to say, UPON TRUST that the trustees shall either retain the same, &c. (*the rest of the Precedent to be the same as the last Precedent*).

No. VII.

APPOINTMENT AND SETTLEMENT BY SAME DEED.

APPOINTMENT *by* PARENTS *to* TRUSTEES *at the request of the intended* WIFE *the object of the power, and* SETTLEMENT *of the appointed money by one and the same deed* (*y*).

Parties.

THIS INDENTURE, made the —— day of ——, 18—, BETWEEN M. D. of, &c., and N., his wife (*father and mother of intended wife*), of the first part, C. D. of, &c. (*intended wife*), of the second part, A. B. of, &c. (*intended husband*), of the third part, and E. F. of, &c., G. H. of, &c., I. K. of, &c. (*trustees*), of the fourth part (*Recitals of settlement on marriage of father and mother, of present state of trust funds, that wife is one of children of said marriage, and of intended marriage, as in Precedent No. IV.*): AND WHEREAS, upon the treaty for the said intended marriage it was agreed that the said M. D. and N., his wife, should appoint one-fifth part of the said trust funds as the share of the said C. D., and that the same should be settled by the said C. D. upon the trusts and in the manner hereinafter expressed; AND it was also agreed, that the appointment should be made directly to the trustees of the settlement intended to be hereby made at the request of the said C. D.: NOW THIS INDEN-

Recital of agreement for appointment and settlement.

Witnessing part.

(*y*) An appointment may be made by the direction of an object of the power to trustees of a settlement on her marriage. Such an appointment is treated, first, as an appointment to the object, and, secondly, a settlement by such object. It is usual to have two deeds; but to save expense the plan of one deed is sometimes adopted.

TURE WITNESSETH, that the said M. D. and N., his wife, in exercise, &c. (*of power, supra*, p. 303), do hereby at the request of the said C. D. (testified by her executing these presents), appoint that if the said intended marriage between the said A. B. and C. D. shall take place within twelve calendar months from the date hereof, the trustees for the time being of the hereinbefore recited indenture of settlement shall, upon the decease of the survivor of them the said M. D. and N., his wife, pay or transfer one equal fifth part or share of and in the trust moneys, stocks, funds, and securities for the time being subject to the trusts of the said indenture to the said E. F., G. H., and I. K. (hereinafter called "the trustees"): UPON TRUST that they shall require the transfer or payment to them of the said part or share hereby appointed when and so soon, &c. (*Trusts to require transfer and to invest, and subsequent trusts, as in Precedent No. V.*).

APPOINTMENT AND SETTLEMENT BY SAME DEED.

Appointment of share to trustees at the request of the object of the power.

Declaration of trusts.

IN WITNESS, &c.

No. VIII.

TRANSFER *by intended* HUSBAND *of* MORTGAGE DEBT *and* SECURITIES *to* TRUSTEES *in contemplation of a* MARRIAGE, *and to the intent that the* MORTGAGE DEBT *may be settled, and the Trusts thereof be declared by a* SETTLEMENT *of even date.*

TRANSFER BY INTENDED HUSBAND OF MORTGAGE DEBT TO TRUSTEES OF INTENDED SETTLEMENT.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*intended husband*), of the first part, C. D. of, &c. (*intended wife*), of the second part, and E. F. of, &c., G. H. of, &c., and I. K. of, &c. (*trustees*), of the third part: WHEREAS by an indenture, &c. (*date and parties*), a farm and lands known as ——, situate in the parish of ——, in the county of ——, in the said indenture more particularly described, were conveyed by the said (*mortgagor*) unto and to the use of the said A. B. in fee simple by way of mortgage to secure payment to him of the

Parties.

Recite mortgage to intended husband.

TRANSFER BY INTENDED HUSBAND OF MORTGAGE DEBT TO TRUSTEES OF INTENDED SETTLEMENT.

sum of £——, with interest thereon, which principal sum still remains owing, but all interest for the same has been duly paid up to the last half-yearly day for payment thereof (*z*): AND WHEREAS a marriage is intended shortly to be solemnized between the said A. B. and C. D.: AND WHEREAS upon the

Agreement for marriage and for settlement of mortgage money.

treaty for the said intended marriage it was agreed that the said principal sum of £——, secured by the hereinbefore recited indenture, and the interest thereof, and the securities for the same, should be transferred to the said E. F., G. H., and I. K., upon the trusts and in the manner hereinafter expressed:

Witnessing part.

NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and in consideration of the said

Assignment of mortgage debt and interest to trustees

intended marriage, the said A. B. as settlor hereby assigns unto the said E. F., G. H., and I. K., the said principal sum of £——, secured by the hereinbefore recited indenture, and all interest due and to become due for the same: AND the benefit of all securities for the same: TO HOLD the same unto the said E. F., G. H., and I. K., IN TRUST for the said A. B., until the

in trust for husband until marriage.

solemnization of the said intended marriage, AND FROM and

After marriage upon trusts of deed of even date.

after the solemnization thereof, UPON such trusts, and with and subject to such powers and provisions as are expressed and declared of and concerning the same by an indenture already prepared and engrossed, bearing or intended to bear even date with these presents, and made or intended to be made between (*parties*): AND THIS INDENTURE ALSO WITNESSETH, that in further pursuance of the said agreement, and in consideration of the said intended marriage, the said A. B. as

Conveyance by intended husband of

settlor hereby conveys unto the said E. F., G. H., and I. K., ALL AND SINGULAR the hereditaments and premises comprised in and

(*z*) Instead of reciting the mortgage deed, the transfer might be described as supplemental to it, thus:

"THIS INDENTURE, &c. (*date and parties as in the text*), and supplemental to an indenture dated, &c., and made, &c., being a mortgage in fee simple of a farm known as ——, situate in the parish of ——, in the county of ——, for securing payment to the said A. B. of the sum of £——, with interest thereon, which principal sum still remains owing," &c. (*as in the text*).

conveyed by the hereinbefore recited indenture: To HOLD the same unto and to the use of the said E. F., G. H., and I. K., in fee simple, subject to such right or equity of redemption as is now subsisting therein under or by virtue of the said indenture (*Clause as to appointing new trustees, supra*, p. 295).

IN WITNESS, &c.

TRANSFER BY INTENDED HUSBAND OF MORTGAGE DEBT TO TRUSTEES OF INTENDED SETTLEMENT.

hereditaments to trustees, subject to subsisting equity of redemption.

No. IX.

TRANSFER *by intended* WIFE *of* MORTGAGE DEBT *and* SECURITIES *to* TRUSTEES *upon the trusts to be declared by a* SETTLEMENT *of even date, by indorsement on mortgage.*

TRANSFER BY INTENDED WIFE OF MORTGAGE DEBT TO TRUSTEES.

THIS INDENTURE, made the —— day of ——, BETWEEN the within named C. D. (*intended wife*), of the first part, A. B. of, &c. (*intended husband*), of the second part, and E. F. of, &c., G. H. of, &c., and I. K. of, &c. (*trustees*) of the third part, WITNESSETH, that in consideration of a marriage intended shortly to be solemnized between the said A. B. and the said C. D., the said C. D. as settlor hereby assigns, &c. (*as in last Precedent, substituting "the within written indenture" for "the hereinbefore recited indenture"*): AND THIS INDENTURE ALSO WITNESSETH, that for the consideration aforesaid, the said C. D. as settlor, hereby conveys, &c. (*Conveyance of mortgaged hereditaments to E. F., G. H., and I. K., subject to equity of redemption as in last Precedent, substituting as above*).

IN WITNESS, &c.

Parties.

Intended wife transfers mortgage debt to trustees as joint tenants, and conveys mortgaged hereditaments to them subject to equity of redemption.

No. X.

PERSONALTY IN POSSESSION AND REVERSION.

SETTLEMENT *by intended* HUSBAND *of a* MORTGAGE DEBT *and by intended* WIFE *of* PERSONAL ESTATE *in* POSSESSION *and* REVERSION; TRUSTS *to pay the* INCOME *to the* WIFE *and* HUSBAND *successively for life; Usual* TRUSTS *and* PROVISIONS; POWER *to* INVEST *in* PURCHASE *of* LAND.

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*intended husband*), of the first part, C. D. of, &c. (*intended wife*), of the second part, and E. F. of, &c., G. H. of, &c., and I. K. of, &c. (*trustees*), of the third part: WHEREAS a marriage is intended shortly to be solemnized between the said A. B. and the said C. D.: AND WHEREAS the said A. B. is entitled to a sum of £—— secured on mortgage of freehold hereditaments situate at ——, and bearing interest after the rate of £4 per cent. per annum, which mortgage was effected by an indenture, &c. (*date and parties*): AND WHEREAS the said C. D. is entitled in possession to the stocks, funds, shares, and securities mentioned in the schedule hereunder written: AND WHEREAS under or by virtue of, &c. (*Recite that C. D. will on her marriage become entitled in reversion to one-fifth of settled trust funds, supra*, p. 305): AND WHEREAS upon the treaty for the said intended marriage, it was agreed that such settlement should be made as hereinafter expressed: AND WHEREAS in part pursuance of the said agreement by an indenture bearing even date with these presents the said A. B. has assigned the said principal sum of £—— and the interest thereof unto the said E. F., G. H., and I. K., IN TRUST for the said A. B. until the said intended marriage shall be solemnized, and after the solemnization thereof upon such trusts and with and subject to such powers and provisions as are expressed and declared concerning the same by an indenture therein mentioned (meaning these presents): AND WHEREAS in further pursuance of the said agreement the stocks, funds, shares, and securities mentioned in the schedule hereunder written have been transferred unto or otherwise vested in the said E. F., G. H., and I. K.: NOW

Recite agreement of marriage.

Fortune of intended husband and wife respectively.

Agreement for settlement.

Transfer of mortgage to trustees,

and of stock to trustees.

PERSONALTY IN POSSESSION AND REVERSION.

THIS INDENTURE, made in consideration of the said intended marriage, WITNESSETH as follows (*a*) :—

Declaration of trust of stocks, &c., in schedule.

1. IT IS AGREED AND DECLARED, that the said E. F., G. H., and I. K. (hereinafter called "the trustees"), shall stand possessed of the stocks, funds, shares, and securities comprised in the schedule hereunder written, IN TRUST for the said C. D. until the said intended marriage shall be solemnized, and after the solemnization thereof shall stand possessed of the said stocks, funds, shares, and securities, and also of the said sum of £—— secured by the said indenture bearing even date herewith, UPON the trusts and with and subject to the powers and provisions hereinafter declared and contained concerning the same.

Wife assigns reversionary share to trustees.

2. THE said C. D., as settlor, hereby assigns unto the trustees ALL, &c. (*assignment of reversionary share in trust funds, supra*, p. 306) : TO HOLD the same unto the trustees, IN TRUST for the said C. D. until the said intended marriage shall be solemnized, AND from and after the solemnization thereof, UPON the trusts and with and subject to the powers and provisions hereinafter declared and contained concerning the same.

Trustees to require transfer, &c., of reversionary share when it falls into possession, and to retain investments or vary same.

3. THE trustees shall require the transfer or payment to them of the part or share of trust funds hereinbefore assigned when and so soon as the same shall fall into possession, and shall, as to the stocks, funds, shares, and securities comprised in the schedule hereto, and the said sum of £—— secured upon mortgage as aforesaid from and after the said intended marriage, and as to the said part or share of trust funds from and after the falling into possession thereof, either retain the same respectively in their present state of investment, or, with the consent in writing of the said A. B. and C. D. during their

Observations on the plan of drawing deeds in paragraphs.

(*a*) This and the subsequent Precedents of Settlements are prepared on the paragraph plan, which has been for some time adopted in Acts of Parliament, equity pleadings, and many other legal and official documents, and is coming into gradual use with conveyancers. It presents obvious advantages as regards perspicuity and facility for convenient arrangement, and seems particularly adapted to such instruments as settlements, whether of real or personal estate.

The first nine Precedents of Settlements are retained in the non-paragraph form for the convenience of those who may prefer it. Any of such precedents may be readily converted into a paragraph deed, and, on the other hand, any of the paragraph deeds may be readily converted into a non-paragraph deed, by omitting the numbers, and adding the appropriate words, "AND IT IS HEREBY ALSO AGREED AND DECLARED," &c., before each clause.

PERSONALTY IN POSSESSION AND REVERSION.

joint lives, and of the survivor of them during his or her life, and after the decease of such survivor, at the discretion of the trustees, sell, call in, and convert into money the same or any part thereof, and shall, with such consent, or at such discretion as aforesaid, invest the moneys to arise from every or any such sale, calling in, and conversion as aforesaid, with power for the trustees, with such consent or at such discretion as aforesaid, to vary the investments thereof. THE said sum of £——, secured upon mortgage as aforesaid, and the investments for the time being representing the same, are hereinafter referred to as "the husband's trust funds," and the stocks, funds, shares, and securities comprised in the schedule hereto, and the said part or share of trust funds hereinbefore assigned, and the investments for the time being representing the same respectively, are hereinafter referred to as "the wife's trust funds."

Income during joint lives to go to husband and wife respectively and then to survivor, and after death of survivor principal to go to issue in usual way.

4. THE trustees shall during the joint lives of the said A. B. and C. D. pay the income of the husband's trust funds to the said A. B., and the income of the wife's trust funds to the said C. D., for her separate use, and so that she shall not have power to dispose thereof in the way of anticipation, and after the decease of such one of them the said A. B. and C. D. as shall die first, shall pay the income of all the said trust funds to the survivor of them during his or her life, and after the decease of such survivor, shall stand possessed of all the said trust funds, IN TRUST for such child, children, or remoter issue of the said intended marriage at such ages or times, or age or time (not being earlier as to any object of this power than his or her age of twenty-one years or day of marriage), in such shares, if more than one, upon such conditions, and in such manner as the said A. B. and C. D. shall by any deed or deeds jointly appoint: AND IN DEFAULT of such appointment, and so far as any such appointment shall not extend, then as the survivor of them the said A. B. and C. D. shall by any deed or deeds, or by his or her will appoint: AND IN DEFAULT of such appointment, and so far as any such appointment shall not extend, IN TRUST for all the children of the said intended marriage who, being sons shall attain the age of twenty-one years, or being daughters shall attain that age or marry under that age, in equal shares, and if there shall be but one such child, then the whole to be in trust for such one child: BUT so, nevertheless, that no child

Hotchpot clause.

who or any of whose issue shall take any part of the trust funds under any such appointment as aforesaid shall be entitled to any share of the unappointed part of the trust funds, without bringing the share or shares appointed to him or her or to his or her issue into hotchpot, and accounting for the same accordingly, unless the persons or person making such appointment shall thereby direct the contrary: AND if there shall be no child of the said intended marriage who, being a son shall attain the age of twenty-one years, or being a daughter shall attain that age or marry, then as to the husband's trust funds, IN TRUST for the said A. B. absolutely, AND as to the wife's trust funds, IN TRUST for the said C. D. absolutely, if she shall survive her now intended coverture: BUT if she shall die during her now intended coverture, then UPON such trusts as the said C. D. shall by her will appoint; AND in default of such appointment, and so far as any such appointment shall not extend, IN TRUST for the person or persons who, under the statutes for the distribution of the effects of intestates, would on the decease of the said C. D. have been entitled thereto if she had died possessed thereof intestate and without having been married, such persons, if more than one, to take as tenants in common in the shares in which the same would have been divisible between them under the same statutes.

PERSONALTY IN POSSESSION AND REVERSION.

Ultimate trust of husband's trust funds for husband, and of wife's trust funds for wife or her appointees by will or next of kin.

5. THE trustees may at any time or times at the request in writing of the said A. B. and C. D. during their joint lives, and of the survivor of them during his or her life, and after the decease of such survivor at the discretion of the trustees, raise any part or parts not exceeding together one moiety of the vested or presumptive share of any child or grandchild of the said intended marriage under these presents, or under any such appointment as aforesaid, and apply the same for his or her advancement, preferment, or benefit in such manner as the said A. B. and C. D. or the survivor of them shall direct or the trustees shall think fit.

Advancement clause.

6. IT IS AGREED (*b*) that all real and personal property (if any) not hereinbefore settled, to which the said C. D., shall at any time during her now intended coverture, become entitled whether in possession, reversion, or otherwise (except jewels, trinkets,

Agreement to settle other property of wife.

(*b*) This will be inserted or omitted, according to the instructions.

PERSONALTY IN POSSESSION AND REVERSION.

ornaments of the person, plate, linen, china, furniture, pictures, prints, books, and other articles of the like nature, and except also any legacy or other property acquired at one and the same time not exceeding in amount or value the sum of £200), shall, so soon as circumstances will admit, and at the cost of the trust estate, be assured and transferred by the said C. D. and by all other necessary and proper parties (if any) unto or otherwise vested in the trustees UPON TRUST that they shall at such time or times, and in such manner as they shall think fit (but as to reversionary property not until it shall fall into possession), sell, call in, and convert into money such part of the said property as shall not consist of money or of authorized investments and shall stand possessed of such part of the said property as shall consist of authorized investments or of money uninvested, and also of the moneys to arise from such sale, calling in, and conversion as aforesaid, upon the trusts and with and subject to the powers and provisions hereinbefore declared and contained concerning the wife's trust funds: AND in the meantime, and so long as any property hereinbefore directed to be sold shall remain unsold, shall pay the rents and income thereof to the person or persons and in the manner to whom and in which the income of the wife's trust funds shall for the time being be payable or applicable under the foregoing trusts: PROVIDED ALWAYS, that if any property to become vested in the trustees as aforesaid shall consist of an annuity or of the rents or income of real or personal property payable to the said C. D. during her life or the life or lives of any other person or persons only, or for any term or period determinable on her death, or on the death of any other person, such annuity, rents, or income shall not be sold unless the said C. D. shall by writing direct the sale thereof, but the said annuity, rents, or income shall, unless and until the same shall be sold, be paid and applied to the person or persons and in the manner to whom and in which the income of the wife's trust funds shall for the time being be payable or applicable under the foregoing trusts.

Investment clause.

7. MONEYS (*c*) liable to be invested under these presents may be invested upon any stocks, funds, or securities authorized by

(*c*) This clause may be omitted altogether if the parties are satisfied with the range of investments permitted by the Trust Investment Act, 1889.

law for trust funds, or in the purchase of inscribed stock of any British colony, or on mortgage of any leasehold houses or land in England or Wales, held for a term whereof sixty years at least shall be unexpired at the time of such investment, or upon a life interest in real or personal property, together with a policy or policies of assurance on the life of the person for whose life such interest shall be holden. [And the trustees (*d*) may, if they think fit, lend money on any security authorized by the said Act, or by these presents, in conjunction with money advanced by any other person or persons by way of contributory loan, and in such case the security may be taken in the joint names of the several contributories or any two or more of them, or in the joint names of any two or more persons to be nominated in that behalf by the several contributories, or such other arrangement may be made in relation thereto as the trustees may think fit.]

PERSONALTY IN POSSESSION AND REVERSION.

Power to lend on contributory mortgages.

8. It shall be lawful for the trustees at any time during the joint lives of the said A. B. and C. D., or the life of the survivor of them, upon their, his, or her request in writing, to convert into money all or any part of the trust funds for the time being subject to the trusts of these presents, and to invest the moneys arising thereby in the purchase of any messuages, lands, or hereditaments (*e*) situate in England or Wales, and being freehold or copyhold of inheritance, or leasehold for any term of years whereof sixty years at least shall be unexpired at the time of the purchase, with liberty upon any such purchase to accept such title or evidence of title as the trustees shall think fit, without being answerable for any loss arising thereby; And the hereditaments so to be purchased as aforesaid shall be assured to the trustees, and shall be held by them upon trust that they

Power to invest in purchase of land.

(*d*) This power of lending on contributory mortgages will be inserted or not, as in each case may be thought desirable. In the absence of a special power, trustees cannot lend on contributory mortgages. See p. 195.

(*e*) Sometimes it is desired to confine the power to the purchase of a dwelling-house. In such case the words will be:—

"in the purchase of any messuage or dwelling-house with any land or ground adjoining thereto, or otherwise convenient to be held therewith, and so that the hereditaments to be purchased under this power shall be situate in England or Wales, and shall be freehold, &c."

PERSONALTY IN POSSESSION AND REVERSION.

shall, with the consent in writing of the said A. B. and C. D., during their joint lives, and of the survivor of them during his or her life, and after the decease of such survivor, at the discretion of the trustees, sell the same, and shall stand possessed of the moneys to arise from such sale after paying thereout the expenses attending such sale upon the trusts and with and subject to the powers and provisions (including the power of purchasing hereditaments) by and in these presents declared and contained concerning the trust funds, which or the proceeds whereof shall have been laid out in the purchase of the said hereditaments, or such of them as shall be then subsisting and capable of taking effect; And shall in the meantime, and until the re-sale of the purchased hereditaments, either permit the same to be occupied by the said A. B. and C. D. or the survivor of them, or with such consent or at such discretion as aforesaid let or demise the same or any part thereof either from year to year or for any term of years not exceeding twenty-one years, to take effect in possession at rack rent, and pay and apply the rents and profits thereof to the person or persons and in the manner to whom and in which the income of the trust funds laid out in the purchase thereof would for the time being have been payable or applicable if such purchase had not been made.

Appointment of new trustees.

9. The power of appointing new trustees conferred by statute, shall, for the purposes of these presents, be vested in the said A. B. and C. D. during their joint lives, and in the survivor of them during his or her life.

10. The trustees, &c. (*Power to trustees to employ solicitor, &c., and for trustee, if employed, to charge, supra*, p. 295.)

Settlement to be void if marriage does not take place within twelve months.

11. If the said intended marriage is not solemnized within twelve calendar months from the date hereof these presents shall be void, and the stocks, funds, shares, and securities comprised in the schedule hereto shall be retransferred to the said C. D.

In witness, &c.

The Schedule above referred to.

No. XI.

SETTLEMENT *of two* SUMS OF MONEY, SECURED *by the* COVENANTS *of the* HUSBAND'S FATHER *and* WIFE'S FATHER *respectively, the* HUSBAND'S LIFE INTEREST *in both* FUNDS *to be determinable on* ALIENATION *or* BANKRUPTCY.

MONEY SECURED BY FATHER'S COVENANT.

THIS INDENTURE, made the —— day of ——, BETWEEN H. B. of, &c. (*father of intended husband*), of the first part, A. B. of, &c., one of the sons of the said H. B. (*intended husband*), of the second part, M. D. of, &c. (*father of intended wife*), of the third part, C. D., spinster, one of the daughters of the said M. D. (*intended wife*), of the fourth part, and E. F. of, &c., G. H. of, &c., and I. K. of, &c. (*trustees*), of the fifth part (*Recite agreement for marriage*): AND WHEREAS upon the treaty for the said intended marriage it was agreed that such settlement should be made as is hereinafter expressed: NOW THIS INDENTURE, made in consideration of the said intended marriage, WITNESSETH AND DECLARES as follows:—

Parties.

Recital of intended settlement.

Witnessing part.

1. THE said H. B. hereby covenants with the said E. F., G. H., and I. K. (hereinafter called "the trustees") to pay to them, within six calendar months after the solemnization of the said intended marriage, the sum of £3,000, with interest thereon after the rate of £4 per cent. per annum, computed from the day on which the marriage shall take place.

Husband's father covenants to pay sum of money to trustees after marriage.

2. THE said M. D. hereby covenants with the trustees, that he the said M. D. will, during his life, or his heirs, executors, or administrators, will, within six calendar months after his death, pay to the trustees the sum of £3,000 sterling, with interest thereon after the rate aforesaid, in case the same shall not be paid in the lifetime of the said M. D., computed from the day of his death.

Wife's father covenants to pay sum of money to trustees on his death.

3. THE trustees shall, upon the receipt of the said sums of £3,000 and £3,000 respectively, with the consent of the said A. B. and C. D. during their joint lives, and of the survivor of them during his or her life, and after the decease of such survivor at the discretion of the trustees, invest the same, and may, with such consent or at such discretion as aforesaid, vary the

Trust to invest.

MONEY SECURED BY FATHER'S COVENANT.

investments thereof. The sum of £3,000 hereinbefore covenanted to be paid by the said H. B., and the investments for the time being representing the same, are hereinafter referred to as "the husband's trust funds," and the sum of £3,000 hereinbefore covenanted to be paid by the said M. D., and the investments for the time being representing the same, are hereinafter referred to as "the wife's trust funds."

Trusts of income of husband's trust funds.

Proviso in case of alienation or bankruptcy.

4. THE trustees shall pay the income of the husband's trust funds to the said A. B. during his life, and after his decease to the said C. D. during her life: PROVIDED ALWAYS, that if the said A. B. shall assign or charge the said income, or any part thereof, or become bankrupt, or do or suffer any other act or thing whereby the said income, if payable to him absolutely, or any part thereof, would become vested in or payable to any other person, then and in such case the trust hereinbefore declared in favour of the said A. B. shall cease and determine, and the trustees shall thenceforth during the life of the said A. B. pay the said income to the said C. D. (if living) for her separate use and so that she shall not have power to dispose thereof in the way of anticipation; but if the said C. D. shall not be living at the time of the cesser of the said trust in favour of the said A. B., or if she shall subsequently die in his lifetime, then from and after the cesser of the said trust, or from and after the death of the said C. D., which shall last happen, the trustees may, at their discretion (*f*), during the remainder of the life of the said A. B. apply the said income or any part thereof for the support or benefit of the said A. B. and his issue (if any) or any of them, in such manner as the trustees shall think fit, and shall pay or apply the surplus (if any) of the said income, or the whole thereof if none shall be applied in manner aforesaid, to the person or persons and in the manner to whom and in which the said income would be payable or applicable under these presents if the said A. B. were dead.

Trusts of income of wife's trust funds.

5. THE trustees shall pay the income of the wife's trust funds to the said C. D. during her life, for her separate use, and

(*f*) As the intention of the parties is generally not to take away the income from the husband except so far as is necessary to prevent its passing into the hands of alienees or creditors, this object seems on the whole to be best attained by a discretionary power vested in the trustees during the rest of the husband's life, as in the text.

MONEY SECURED BY FATHER'S COVENANT.

so that she shall not have power while under coverture to dispose thereof in the way of anticipation, and after her death shall pay the said income to the said A. B. if he shall survive her during his life: PROVIDED ALWAYS that if the said A. B. shall assign or charge the said income or any part thereof, or become bankrupt, or do or suffer any other act or thing whereby the said income, if payable to him absolutely, or any part thereof, would become vested in or payable to any other person, then and in such case the trust declared by this present article in favour of the said A. B. shall cease and determine: AND from and after the death of the said C. D., or the cesser of the last-mentioned trust, which shall last happen, and during the remainder of the life of the said A. B., the trustees may at their discretion apply the said income or any part thereof for the support or benefit of the said A. B. and his issue (if any) or any of them in such manner as the trustees shall think fit, and shall pay or apply the surplus (if any) of the said income, or the whole thereof if none shall be applied in manner aforesaid, to the person or persons and in the manner to whom and in which the said income would be payable or applicable under these presents if the said A. B. were dead.

Similar proviso on alienation or bankruptcy.

6. AFTER the death of the survivor of the said A. B. and C. D. the trustees, &c. (*Trust for issue and hotchpot clause, supra*, pp. 316, 317): AND if there shall be no child of the said intended marriage who being a son shall attain the age of twenty-one years, or being a daughter shall attain that age or marry, then as to the husband's trust funds, IN TRUST (*g*)

Trusts for issue, and ultimate trust of husband's trust funds for appointees of husband's father, and in default of appointees for husband.

(*g*) Where the money settled on the part of either party is found by his or her father, it is not quite clear what ought to be the form of the ultimate trust in case of no issue of the marriage. The father may expect that the money should come back to him in that event, and that the ultimate trust should be framed accordingly. This seems right in theory, but it would often lead in practice to an inequality. Suppose, for instance, that the father dies shortly afterwards, and then the son or daughter (as the case may be) becomes a widower or widow, without issue of the marriage. It is probable that the father will by his will have given his residue among his other children, thinking the child in question to be already provided for by the settlement. If this is so, the child will be reduced to a life interest, and will be unable, in case of a second marriage, to make any settlement; whereas the other children will probably have an absolute interest in their shares. On the whole, it is recommended that, in the absence of special instructions, a power of appointment by deed be given to the father, and that, subject to such power, the ultimate trust be in the usual form, except that the testamentary power usually given to a wife when the money settled is her own may be properly omitted, or a limited power of appointment may be given as above.

Observations as to the proper form of the ultimate trust, where money is settled by father of husband or wife.

MONEY SECURED BY FATHER'S COVENANT.

for such person or persons and in such manner as the said H. B shall by deed appoint, and in default of such appointment, and so far as any such appointment shall not extend, IN TRUST for the said A. B., absolutely: AND as to the wife's trust funds, IN TRUST for such person or persons, and in such manner as the said M. D. shall by deed appoint: AND in default of such appointment, and so far as any such appointment shall not extend, IN TRUST for the said C. D., absolutely, if she shall survive her now intended coverture, but if she shall die during her now intended coverture, then [IN TRUST for such person or persons being a brother or sister, or brothers or sisters, or the issue of a brother or sister, or of brothers or sisters, of her the said C. D., as she the said C. D. shall by deed or will appoint, and in default of such appointment, and so far as any such appointment shall not extend] IN TRUST for, &c. (*next of kin under the Statute of Distribution,—remaining clauses as in last Precedent, supra*, pp. 317 to 320).

Corresponding ultimate trust, of wife's trust funds.

IN WITNESS &c.

No. XII.

CONVEYANCE OF LAND ON TRUST FOR SALE IN CONTEMPLATION OF MARRIAGE.

CONVEYANCE *of* FREEHOLDS *in* CONTEMPLATION *of a* MARRIAGE *to the use of the* HUSBAND *and* WIFE *successively for* LIFE *and then to* TRUSTEES *on* TRUST *to* SELL, *and hold the* PROCEEDS *on the* TRUSTS *of an* INDENTURE *of* SETTLEMENT *of even date* (*h*).

Parties.

THIS INDENTURE, made the —— day of ——, 18—, BETWEEN A. B. of &c. (*intended husband*), of the first part, C. D.

Proper form of a conveyance in trust for sale, having regard to sect. 63 of the Act of 1882 and sect. 7 of the Act of 1884.

(*h*) A conveyance of land to trustees in trust for sale where the proceeds are directed to be held in trust for persons in succession is a settlement within the meaning of sect. 63 of the Settled Land Act, 1882, and the beneficiary for life for the time being has all the powers of sale, leasing, making exchanges, partitions, &c., conferred by the Act on a tenant for life, but such powers cannot be exercised without the leave of the Court. Settled Land Act, 1884, s. 7.

It is apprehended that in a simple case such as a settlement on marriage in the usual form, where the husband or the wife has the whole beneficial interest for life, it will be a matter of course for the Court to give the leave if applied to. See *In re* Harding's Estate, (1891) 1 Ch. 60; and this being

CONVEYANCE OF LAND ON TRUST FOR SALE IN CONTEMPLATION OF MARRIAGE.

of &c. (*intended wife*), of the second part, and E. F. of &c., G. H. of &c. and I. K. of &c. (*trustees*), of the third part: WITNESSETH, that in consideration of a marriage intended shortly to be solemnized between the said A. B. and the said C. D., the said A. B. as settlor (*i*) hereby conveys unto the said E. F., G. H., and I. K. (hereinafter called "the trustees"), ALL, &c. (*parcels*), TO HOLD the same unto the trustees in fee simple, TO THE USE of the said A. B. in fee simple until the said intended marriage, and after the said marriage, TO THE USE of (*k*) the said A. B. during his life without impeachment of waste,

Conveyance of hereditaments to trustees for sale;

so, it seems better that the beneficiary should be placed by the deed itself in a position to exercise the powers, so as to save the expense of an application to the Court for leave. This is particularly so as regards the powers of leasing. With this object in view, the above Precedent makes the husband and wife successive tenants for life of the property itself, and the trust for sale does not arise until the death of the survivor. If it is desired to sell before, the sale can be made by the tenant for life and the purchase-moneys will be payable to the trustees. See Settled Land Act, 1890, s. 16 (2).

If, however, it is wished to keep the power of sale in the trustees until the Court makes an order under the Act of 1884, some provision must be made for granting leases in the meantime. Either an express power of leasing should be given to the trustees, or there should be a clause providing that the powers conferred by sect. 63 of the Act of 1882, other than the power of sale, may be exercised without leave of the Court. See Precedent No. XIII.

(*i*) Although it was formerly usual to insert in a conveyance made in contemplation of marriage to trustees for sale covenants for title by the person conveying, as upon a sale by him, it is apprehended that, since the Conveyancing Act, 1881, it is proper to make him convey, not as beneficial owner, but as settlor, under which form a covenant for further assurance only will be implied. A person making a settlement may fairly object to make himself liable for the acts of his ancestors, as he would under a vendor's covenants for title.

In a conveyance before marriage settlor should convey as settlor, not as beneficial owner.

(*k*) In the above Precedent, the legal estate is given to the beneficiaries for life. If the wife is the settlor, the legal estate should be given to the trustees throughout, and in that case the *habendum* should be: UNTO AND TO THE USE of the trustees in fee simple, IN TRUST for the said C. D. (*wife*), in fee simple until the said intended marriage, and after the said marriage, IN TRUST to pay the rents and profits thereof to the said C. D. during her life for her separate use, and so that she shall not have power while under coverture to dispose thereof in the way of anticipation, and after her decease, IN TRUST to pay the rents and profits thereof to the said A. B. during his life, and after the decease of the survivor of the said A. B. and C. D., IN TRUST that the trustees shall, &c. (*sell, as above*).

CONVEYANCE OF LAND ON TRUST FOR SALE IN CONTEMPLATION OF MARRIAGE.

and to hold proceeds of sale on trusts of indenture of even date.

and after his decease, To THE USE of the said C. D. during her life without impeachment of waste, and after the decease of the survivor of the said A. B. and C. D., To THE USE of the trustees in fee simple, UPON TRUST that the trustees shall, at such time or times as they shall think fit, sell the said hereditaments and premises, and shall out of the moneys to arise therefrom pay and retain the costs and expenses attending such sale, and shall stand possessed of the residue of the said moneys, and also of the rents and profits of the said hereditaments and premises in the meantime and until the sale thereof, upon such trusts and with and subject to such powers and provisions as are or shall be expressed and declared concerning the same respectively by an indenture already prepared and engrossed, bearing or intended to bear even date with these presents, and made or intended to be made between, &c. (*parties*): AND IT IS HEREBY DECLARED that (*provision as to appointment of new trustees, supra*, p. 295).

IN WITNESS, &c.

No. XIII.

CONVEYANCE OF LAND ON TRUST FOR SALE IN CONTEMPLATION OF MARRIAGE.

CONVEYANCE *of* FREEHOLDS *in* CONTEMPLATION *of* MARRIAGE *to* TRUSTEES *on* TRUST *to* SELL *and hold* PROCEEDS *on* TRUSTS *of an* INDENTURE *of even date.* POWER *to* TRUSTEES *to* LEASE (*l*).

Conveyance of hereditaments to trustees for sale;

THIS INDENTURE, &c. (*same as No. XII. down to habendum*), To HOLD the same unto and to the use of the trustees in fee simple, IN TRUST for the said A. B. in fee simple until the said intended marriage, and after the said marriage, UPON TRUST that the trustees shall, upon the request of the said A. B. during his life, and after his decease upon the request in writing of the said C. D. during her life, and after the decease of the survivor of them the said A. B. and C. D., at the discretion of the trustees, sell the said hereditaments and premises, and shall

(*l*) See note at p. 325.

CONVEYANCE OF LAND ON TRUST FOR SALE IN CONTEMPLATION OF MARRIAGE.

receive the moneys which shall arise from any such sale as aforesaid, and after paying and retaining thereout the costs and expenses attending such sale, shall stand possessed of the residue of the said moneys, upon such trusts and with and subject to such powers and provisions as are or shall be expressed and declared concerning the same by an indenture already prepared and engrossed, bearing or intended to bear even date with these presents, and made or intended to be made between, &c. (*parties*): AND UPON FURTHER TRUST that in the meantime and until such sale as aforesaid the trustees shall permit the rents and profits of the said hereditaments to be received by the said A. B. during his life, and after his decease by the said C. D. during her life, and after the decease of the survivor of the said A. B. and C. D. shall stand possessed of the said rents and profits upon the trusts declared concerning the same by the indenture above referred to: AND IT IS HEREBY DECLARED that until the said hereditaments shall be sold as aforesaid, it shall be lawful for the trustees, upon such request or at such discretion as aforesaid, to lease the same or any part thereof for any term of years not exceeding twenty-one years, to take effect in possession, at the best rent that can reasonably be obtained for the same, without taking anything in the nature of a fine or premium, and subject to such covenants and conditions as the trustees shall think fit (*m*). AND IT IS HEREBY ALSO DECLARED that (*provision as to appointment of new trustees, supra*, p. 295).

and to hold proceeds of sale on trusts of indenture of even date;

and in the meantime to allow husband and wife successively to receive the rents and profits.

Power to lease.

IN WITNESS, &c.

(*m*) Instead of the above power of leasing, the following clause may be inserted:—

AND IT IS HEREBY DECLARED that the power of leasing and other powers conferred by sect. 63 of the Settled Land Act, 1882 (except the power of sale), may be exercised as regards the hereditaments hereby conveyed without the leave of the Court, notwithstanding sect. 7 of the Settled Land Act, 1884.

No. XIV.

ASSIGNMENT OF LEASEHOLDS IN TRUST FOR SALE.

ASSIGNMENT *of* LEASEHOLD HOUSE *in* CONTEMPLATION *of* MARRIAGE *to* TRUSTEES *in* TRUST *for* HUSBAND *and* WIFE *successively for* LIFE, *and then in* TRUST *for* SALE *and to hold* PROCEEDS *on* TRUSTS *of an* INDENTURE *of even date.*

Parties.

THIS INDENTURE, made the —— day of ——, 18—, BETWEEN A. B. of, &c. (*intended husband*), of the first part, C. D. of, &c. (*intended wife*), of the second part, and E. F. of, &c., G. H. of, &c., and I. K. of, &c. (*trustees*), of the third part:

In consideration of marriage husband assigns leasehold house

WITNESSETH, that in consideration of a marriage intended shortly to be solemnized between the said A. B. and the said C. D., the said A. B. as settlor hereby assigns unto the said E. F., G. H., and I. K. (hereinafter called "the trustees"), the messuage and land comprised in an indenture of lease dated, &c., and made, &c. (*date and parties*), and therein described as ALL, &c. (*copy description from lease*), which premises were by the said indenture of lease demised unto the said A. B. for a term of —— years from the —— day of ——, 18—, at the yearly rent of £——, and subject to the covenants and conditions therein contained and on the lessee's part to be observed and performed,

to trustees

To HOLD the same unto the trustees for all the residue now unexpired of the said term of —— years subject to the said rent, covenants, and conditions:

in trust for husband until marriage, and then

IN TRUST nevertheless for the said A. B. until the said intended marriage shall be solemnized: AND from and after the solemnization thereof,

for husband and wife successively for life, and then

IN TRUST for the said A. B. during his life, and after his decease, IN TRUST for the said C. D. during her life, and after the decease of the survivor of the said A. B. and C. D.,

to sell.

IN TRUST that the trustees shall, &c. (*sell and hold proceeds and rents in meantime on trusts declared by deed of even date, supra*, p. 326; *provision as to appointment of new trustees, supra*, p. 295):

Covenants by husband and wife to pay rent, &c., and indemnify trustees.

AND the said A. B. and C. D. hereby respectively covenant with the trustees that they the said A. B. and C. D. respectively will during their respective lives pay the rent reserved by the said indenture of lease, and observe and perform the covenants and conditions

ASSIGNMENT OF LEASEHOLDS IN TRUST FOR SALE.

therein contained and on the lessee's part to be observed and performed, and will keep indemnified the trustees from and against the said rent, covenants, and conditions, and all actions, claims, and demands in respect thereof.

IN WITNESS, &c.

No. XV.

BY HUSBAND OF MONEY PRODUCED BY SALE OF REAL ESTATE AND BY INFANT WIFE OF PERSONALTY.

SETTLEMENT *on the part of the intended* HUSBAND *of the* PROCEEDS *of the sale of* FREEHOLD *or* LEASEHOLD *property conveyed upon* TRUST *for* SALE *by an Indenture of even date, and* SETTLEMENT *on the part of the intended* WIFE *who is an* INFANT, *with the* SANCTION *of the* COURT *under the* INFANTS SETTLEMENT ACT (*m*), *of* PERSONAL ESTATE *in* POSSESSION *and* REVERSION, *including a share in the* PROCEEDS *of* LAND *directed to be sold;* POWER *to* WIFE *to settle part of* TRUST FUNDS *on a* FUTURE MARRIAGE; PROVISION *for settling* OTHER PROPERTY, *if any, of* WIFE; POWER *to invest in* PURCHASE *of* LAND *and to* ELECT *to take* SHARE *of land in* LIEU *of the* SETTLED SHARE *of the* PROCEEDS *of such land.* POWER *to* LEND *part of the trust money to the* HUSBAND *on his* BOND, *and on* POLICY *of* ASSURANCE *on his life.*

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*intended husband*), of the first part, C. D., spinster, the eldest daughter of M. D. of, &c, and N., his wife, and an infant of the age of eighteen years or thereabouts (*intended wife*), of the second part, and E. F. of, &c., G. H. of, &c., and I. K. of, &c. (*trustees*), of the third part: WHEREAS a marriage is intended shortly to be solemnized between the said A. B. and the said C. D.: AND WHEREAS the said C. D. will, upon her marriage, become entitled to a sum of £—— $2\frac{3}{4}$ per Cent. Consolidated Stock, standing in the name of X. Y., the surviving

Parties.

Recital of intended marriage.

That wife will upon marriage be entitled to stock.

(*m*) See p. 279, *supra*,

BY HUSBAND OF MONEY PRODUCED BY SALE OF REAL ESTATE AND BY INFANT WIFE OF PERSONALTY.

executor of the will of P. Q., late of, &c., deceased, in the books of the Governor and Company of the Bank of England, and representing a legacy of £—— sterling thereby bequeathed to the said C. D.: And whereas under or by virtue of an indenture, dated, &c., and made, &c. (being the settlement made in contemplation of the marriage then intended, and shortly afterwards solemnized, between the said M. D. and N., his wife), and a deed poll of appointment under the hands and seals of the said M. D. and N., his wife, bearing even date with these presents, the said C. D. will upon the solemnization of the said intended marriage, in case the same shall be solemnized before the expiration of twelve calendar months from the date of the said deed poll, become entitled in reversion expectant on the decease of the survivor of the said M. D. and N., his wife, to one moiety of the moneys, stocks, funds, and securities subject to the trusts of the said indenture of settlement, and which moneys, stocks, funds, and securities now consist of the following particulars (that is to say), the sum of £—— India 3½ per Cent. Stock, standing in the names of W. X. and Y. Z., the present trustees of the said indenture, and the moneys to arise from the sale of certain freehold lands and hereditaments situate at, &c., and which freehold hereditaments have been purchased with part of the moneys settled by the said indenture of settlement under a power in that behalf contained in the same indenture: And whereas by an indenture bearing even date with these presents and made between the same parties, the said A. B. has conveyed certain freehold hereditaments situate at —— unto the said E. F., G. H., and I. K. in fee simple to the use of the said A. B. in fee simple until the solemnization of the said intended marriage, and after the solemnization thereof to the use of the said A. B. during his life, with remainder to the use of the said C. D. during her life, with remainder to the use of the said E. F., G. H., and I. K. in fee simple, Upon trust to sell the same, and out of the moneys to arise from such sale to pay the costs and expenses attending the sale and to stand possessed of the residue of the said moneys and of the rents and profits of the said hereditaments in the meantime and until the sale thereof, Upon the trusts and with and subject to the powers and provisions declared by an indenture therein referred to, meaning these presents [*or, if the*

That wife will upon marriage become also entitled to reversionary share in sum of stock, and also in money to arise from sale of land.

Conveyance by intended husband of freehold property to trustees in trust for sale,

property is leasehold, And whereas by an indenture dated, &c., and made, &c., the said A. B. has assigned a leasehold messuage and premises situate at, &c., and held under an indenture of lease dated the —— day of ——, 18—, unto the said E. F., G. H., and I. K. for all the unexpired residue of a term of years granted therein by the said indenture of lease, subject to the rent thereby reserved and the covenants and conditions therein contained and on the lessee's part to be observed and performed, In trust for the said A. B. during his life, and after his decease in trust for the said C. D. during her life, and after the decease of the survivor of the said A. B. and C. D., In trust to sell the same, &c. (*as before*), *or, if the conveyance is according to Precedent No. XIII.*, And whereas by an indenture dated, &c., and made, &c., the said A. B. has conveyed certain freehold hereditaments situate at, &c., unto and to the use of the said E. F., G. H., and I. K. in fee simple, In trust upon such request or at such discretion as therein mentioned to sell the same, and out of the moneys to arise from such sale to pay the costs and expenses attending the sale, and to stand possessed of the residue of the said moneys and of the rents, &c. (*as before*)]: And whereas (*n*) by an order of the Chancery Division of the

BY HUSBAND OF MONEY PRODUCED BY SALE OF REAL ESTATE AND BY INFANT WIFE OF PERSONALTY.

or of leasehold property on a similar trust.

Order of Court under Infant

(*n*) If the settlement is made without the sanction of the Court, the following will be substituted for the recital in the text and for Article 1 :—

And whereas upon the treaty for the said intended marriage it was agreed that such settlement should be made as hereinafter appears: NOW THIS INDENTURE WITNESSETH, that in consideration of the said intended marriage it is hereby agreed and declared between and by the parties hereto as follows:—

Agreement for settlement.

Witnessing part.

Agreement by all parties

1. The said A. B. and C. D. and all other necessary parties shall, at the cost of the trust estate, cause and procure the said sum of £—— $2\frac{3}{4}$ per Cent. Consolidated Stock, and also the said moiety to which the said C. D. will, upon her said marriage, become entitled of and in the trust funds and property subject to the trusts of the said indenture of settlement of the —— day of ——, to be respectively transferred and paid to the said E. F., G. H., and I. K. (hereinafter called "the trustees"), as to the said Consolidated Stock, so soon as conveniently can be after the solemnization of the said intended marriage, and as to the said reversionary moiety, when and so soon as the same shall fall into possession.

that trust funds of the intended wife shall be vested in trustees.

BY HUSBAND OF MONEY PRODUCED BY SALE OF REAL ESTATE AND BY INFANT WIFE OF PERSONALTY.

Settlement Act.

High Court of Justice made on the —— day of ——, 18—, in the matter of the Act passed in the 18th and 19th years of the reign of Her Majesty, chapter 43, the Court being of opinion that the settlement proposed to be effected by the indenture therein referred to, meaning these presents, is a proper settlement to be made in contemplation of the said marriage, has, pursuant to the said Act, sanctioned and approved of such settlement, and has ordered that the said C. D. be at liberty, in contemplation of her said marriage, to execute the same:

Witnessing part.

NOW THIS INDENTURE, made in consideration of the said intended marriage, WITNESSETH, as follows:—

Assignment by intended wife to trustees.

1. THE said C. D., as settlor, hereby assigns unto the said E. F., G. H., and I. K. (hereinafter called "the trustees"), the said sum of £—— Consolidated Stock, and also the said moiety to which the said C. D. will upon her said marriage become entitled of and in the trust funds and property subject to the trusts of the said indenture of settlement of the —— day of ——, TO HOLD the same unto the trustees, UPON the trusts and with and subject to the powers and provisions hereinafter declared and contained concerning the same.

Trustees upon receipt thereof to retain or convert same into money and to invest proceeds and also proceeds of sale of hereditaments comprised in deed of even date, with power to vary investments.

2. THE trustees shall, upon the receipt of the several trust funds assigned by Article 1, either retain the same respectively in their respective actual state of investment (if any), or with the consent in writing of the said A. B. and C. D. during their joint lives, and of the survivor of them during his or her life, and after the decease of such survivor, at the discretion of the trustees, sell and convert into money the same, and shall, with such consent, or at such discretion as aforesaid, invest the moneys produced by such sale and conversion, and also such part (if any) of the said trust funds as shall consist of money, and also the moneys to arise from the sale of the hereditaments comprised in the said indenture bearing even date herewith [whether such sale shall be made by the tenant for life thereof under the powers of the Settled Land Acts or by the trustees under the trust for sale therein contained (*o*)], with liberty from time to time, with the like consent or at the like discretion, to vary the investments thereof. THE moneys to arise from the sale of the

(*o*) The words within brackets will be omitted if the conveyance in trust for sale is in the form of Precedent No. XIII.

said hereditaments, and the investments for the time being representing the same, are hereinafter called "the husband's trust funds"; and the trust funds assigned by Article 1, and the investments for the time being representing the same, are hereinafter called "the wife's trust funds."

BY HUSBAND OF MONEY PRODUCED BY SALE OF REAL ESTATE AND BY INFANT WIFE OF PERSONALTY.

3, 4. *Same as in Articles* 4 *and* 5 *of Precedent No. X., supra*, pp. 316, 317).

Rents of hereditaments until sold to go as income of husband's trust funds.

5. If the hereditaments comprised in the said indenture of even date herewith shall remain unsold at the decease of the survivor of the said A. B. and C. D., the net rents and profits of the same hereditaments, or such part thereof as shall for the time being remain unsold, shall thenceforth be paid and applied to the person or persons and in the manner to whom and in which the income of the moneys to arise from the sale thereof, and the investments representing the same, would for the time being be payable or applicable under these presents if such sale had been made.

Power to wife to appoint income of part of the trust funds to a future husband,

6. Notwithstanding the foregoing trusts, it shall be lawful for the said C. D. if she shall marry again (*p*) at any time or times, either before or after any such subsequent marriage, by any deed or deeds, or by her will to appoint that the income of any part or parts not exceeding the proportion hereinafter mentioned of the wife's trust funds, shall be paid to any husband of her the said C. D. who may survive her, for his life or any less period: And also to appoint that any part or parts not exceeding the proportion hereinafter mentioned of the wife's trust funds, shall from and after the decease of the said C. D. (and subject to any life or other interest appointed to a husband under the power last hereinbefore contained, in exoneration of the residue of the wife's trust funds), go and be held, In trust for such child, children, or remoter issue of any such subsequent marriage, at such age or time, ages or times, not being earlier as to any object of this

and also the principal of a portion of the trust funds to the issue of a future marriage.

(*p*) Whenever the property of the wife is of considerable amount, and her age is such as to make it not improbable that if she survives her husband she may marry again and have issue by her second husband, a power to make a settlement on such second marriage should be given her. Three alternative forms of such a power are given above, one of which may be readily adapted to meet any variation which the circumstances of the case may require.

Sometimes a similar power is reserved to the husband. In such case either of the above forms may be used, changing "husband" into "wife," and making a corresponding change in the gender throughout.

BY HUSBAND OF MONEY PRODUCED BY SALE OF REAL ESTATE AND BY INFANT WIFE OF PERSONALTY.

power than his or her age of twenty-one years or day of marriage, in such shares, if more than one, upon such conditions and in such manner as the said C. D. shall by such appointment direct, with liberty for her in and by such appointment to confer on her husband jointly with herself and on the survivor of them any power or powers of appointment to or among their issue, or any of them, and also to confer on the trustees a power of advancement to the extent of one moiety of the vested or presumptive share of any child or remoter issue: PROVIDED ALWAYS, that the part or parts of the wife's trust funds, the income whereof may be appointed to any after-taken husband, and the principal whereof may be appointed to the issue of any subsequent marriage or marriages of the said C. D., under the foregoing powers in that behalf, shall not exceed the proportion of the wife's trust funds which is next hereinafter mentioned (that is to say), IF THERE SHALL BE only one child of the now intended marriage, who, being a son, shall attain the age of twenty-one years, or being a daughter shall attain that age or marry, the same shall not exceed two-third parts of the wife's trust funds: IF THERE SHALL BE two or three children, and no more, of the now intended marriage, who, being a son or sons, shall attain the age of twenty-one years, or being a daughter or daughters shall attain that age or marry, the same shall not exceed one moiety of the wife's trust funds: AND IF THERE SHALL BE four or more children of the now intended marriage, who, being a son or sons, shall attain the age of twenty-one years, or being a daughter or daughters shall attain that age or marry, the same shall not exceed one third part of the wife's trust funds: [PROVIDED ALSO (*q*), that the part or parts of the wife's trust funds to which the issue of any subsequent marriage or marriages of the said C. D. shall become entitled between them under any such appointment or appointments as aforesaid, shall not bear a greater proportion to the residue of the wife's trust funds than the number of children of any such subsequent marriage or marriages, who, being a son or sons, shall attain the age of twenty-one years, or being a daughter or daughters shall attain that age or marry, shall bear to the number of children of the now intended marriage, who, being a son or sons, shall attain

Portion to be appointed under aforesaid powers not to exceed a certain proportion of the trust funds according to the number of children of now intended marriage.

Issue of a future marriage shall not take a greater proportion between them than issue of now intended marriage.

(*q*) This proviso will be omitted when not thought necessary.

the age of twenty-one years, or being a daughter or daughters shall attain that age or marry: But in ascertaining such proportion as last aforesaid any sum of money which may be advanced for the benefit of an infant child under the power in that behalf contained in these presents or in any such appointment as aforesaid, shall not be reckoned or taken into account as part of the wife's trust funds unless such child, being a son, shall attain the age of twenty-one years, or being a daughter shall attain that age or marry under that age.] Provided also, that the said C. D. may exercise the foregoing powers in favour of an after-taken husband and the issue of a subsequent marriage respectively, while it shall be uncertain what part of the wife's trust funds shall or may eventually fall within the scope thereof, and the same shall take effect according to the event: And if at the decease of the said C. D. any son or unmarried daughter of the now intended marriage shall be under the age of twenty-one years, the income payable to an after-taken husband under any such appointment as aforesaid shall, during such minority, be the same as would for the time being be payable to him if every such minor had attained the age of twenty-one years.

BY HUSBAND OF MONEY PRODUCED BY SALE OF REAL ESTATE AND BY INFANT WIFE OF PERSONALTY.

Powers in favour of future husband and issue of future marriage may be exercised before event is ascertained.

(*Or the following form.*)

6A. Notwithstanding the foregoing trusts, it shall be lawful for the said C. D., if she shall marry again at any time or times, either before or after any such subsequent marriage, by any deed or deeds, or by her will, to appoint that the income of any part not exceeding one moiety of the wife's trust funds shall after her decease be paid to any husband of her who may survive her during his life or for any less period: And also to appoint that any part of the wife's trust funds not bearing a greater proportion to the residue of the wife's trust funds than the number of children of any subsequent marriage or marriages of the said C. D., who, being a son or sons, shall attain the age of twenty-one years, or being a daughter or daughters shall attain that age or marry, shall bear to the number of children of the now intended marriage, who, being a son or sons, shall attain the age of twenty-one years, or being a daughter or daughters shall attain that age or marry, shall from and after the decease of the said C. D. (and subject to any life or other interest appointed

Power to wife to appoint income of a moiety of the wife's trust funds to a future husband for life,

and a certain proportion corresponding with the number of children of each marriage to the issue of a future marriage.

BY HUSBAND OF MONEY PRODUCED BY SALE OF REAL ESTATE AND BY INFANT WIFE OF PERSONALTY.

to a husband as aforesaid in exoneration so far as the same will extend of the residue of the wife's trust funds), go and be held, In trust for such child, children, or remoter issue of the said C. D. by any such subsequent marriage at such age or time, ages or times (not being earlier as to any object of this power than his or her age of twenty-one years, or day of marriage), in such shares, if more than one, and in such manner as she the said C. D. shall by such appointment direct, with liberty for her in and by such appointment to confer on her husband jointly with herself, and on the survivor of them, any power or powers of appointment to be subsequently exercised to or among their issue or any of them, and also to confer on the trustees a power of advancement to the extent of one moiety of the vested or presumptive share of any child or remoter issue.

(*Another form.*)

Power to wife to appoint income of a moiety to future husband for life and corpus of a moiety to issue of a future marriage.

6B. If the said C. D. shall survive her now intended coverture and marry again [and there shall be not more than four children of the now intended marriage, who, being a son or sons, shall attain the age of twenty-one years, or being a daughter or daughters shall attain that age or marry] (*r*) then and in such case, and notwithstanding the foregoing trusts, it shall be lawful for the said C. D., either before or after any such subsequent marriage by any deed or deeds or by her will to appoint that the income of any part not exceeding one moiety of the wife's trust funds shall after her decease be paid to any husband of her who may survive her, during his life or for any less period, And also to appoint that any part not exceeding one moiety of the wife's trust funds shall, after the decease of the said A. B., and subject to any life or other interest appointed to a husband under the power last hereinbefore contained, in exoneration of the residue of the said trust funds, go and be held, In trust for, &c. (*Issue of a future marriage as in Article* 6A.)

7, 8, 9. (*Agreement to settle after-acquired property of wife—Investment clause, and power to invest in purchase of land, as in Precedent No. X., supra*, pp. 317 to 320.)

(*r*) The words in brackets can be omitted if desired.

BY HUSBAND OF MONEY PRODUCED BY SALE OF REAL ESTATE AND BY INFANT WIFE OF PERSONALTY.

10. If at the decease of the survivor of the said M. D. and N., his wife, the said freehold hereditaments at ——, or any part thereof, or any other hereditaments purchased with or out of the trust funds subject to the trusts of the said indenture of settlement of the —— day of ——, shall remain unsold, the trustees of these presents may, with such consent or at such discretion as aforesaid, take from the trustees for the time being of the said indenture of settlement a conveyance or other assurance of an undivided moiety of the same hereditaments, in lieu of and in satisfaction for the moiety of the said C. D. of and in the moneys to arise from the sale of the same hereditaments: and in that case the trustees of these presents shall stand seised and possessed of the undivided moiety so to be assured to them as aforesaid of and in the said hereditaments, upon the same trusts, and with and subject to the same powers and provisions, as the same moiety would have been subject to by virtue of these presents if the same had been purchased with the proceeds of any part of the wife's trust funds under Article 9.

Power to trustees to elect to take moiety in land in lieu of moiety settled by wife of proceeds of sale.

11. It shall be lawful for the trustees at their discretion, at any time or times during the life of the said A. B., upon his request in writing, and with the consent in writing of the said C. D., if she shall be then living, to raise out of the trust funds, and to lend to the said A. B. any sum or sums of money not exceeding together the sum of £——, upon his securing the repayment thereof with interest by his bond or covenant, and by a policy of assurance on his life in a sum of money equal to the amount so lent, which policy shall be either effected in the names of the trustees, or assigned to them by way of mortgage, with such proper and usual covenants on the part of the said A. B. for keeping on foot the said policy, and otherwise in relation thereto, as the trustees shall require: And if the said A. B. shall neglect or fail to keep on foot the said policy, it shall be lawful for the trustees to apply a competent part of the income of the trust funds in or towards the payment of any sums which may be required for keeping on foot the said policy, or (in case the same shall become void) for effecting or keeping on foot any new policy in lieu thereof: Provided nevertheless, that it shall not be obligatory on the trustees to enforce the performance of any bond or covenant to be entered into by the said

Power to lend part of trust funds to husband on the security of his bond or covenant and a policy of assurance on his life.

Power to trustees to apply income of trust funds in keeping up policy.

Proviso for indemnity of trustees in relation to the exercise of this power.

BY HUSBAND OF MONEY PRODUCED BY SALE OF REAL ESTATE AND BY INFANT WIFE OF PERSONALTY.

A. B. for the repayment of the money to be lent to him as aforesaid, or for keeping on foot any policy or otherwise in relation thereto, nor to apply any part of the income of the trust funds in or towards keeping on foot or effecting any such policy as aforesaid, unless the trustees shall think fit so to do, and the trustees shall not be liable for any loss which may arise by reason of the non-performance by the said A. B. of any such bond or covenant as aforesaid, or by reason of any such policy becoming void through any means whatsoever: PROVIDED ALSO, that the trustees shall not require the said A. B. to repay any money lent to him under the power conferred by this article so long as he shall duly keep on foot the policy of assurance on which the same shall for the time being be secured: BUT the said A. B. shall be at liberty to pay the same or any part thereof not being less than £—— at one payment whenever he thinks fit so to do.

Proviso that money lent to husband shall not be called in so long as he keeps up policy.

Power to appoint new trustees.

12. THE power of appointing new trustees, &c. (*Clause as to appointment of new trustees, supra*, p. 320).

Settlement to be void if marriage is not within twelve months.

13. THESE PRESENTS shall be void if the said intended marriage shall not be solemnized within twelve calendar months from the date hereof.

IN WITNESS, &c.

No. XVI.

UPON SECOND MARRIAGE OF A LADY.

SETTLEMENT *upon the* SECOND MARRIAGE *of a* LADY, *in exercise of* POWER *in a* FORMER SETTLEMENT.

Parties.

THIS INDENTURE, made the —— day of ——, 18—, BETWEEN C. B. of, &c., widow (*intended wife*), of the first part, X. Y. of, &c. (*intended husband*), of the second part, and E. F. of, &c., G. H. of, &c., and I. K. of, &c., of the third part:

Recital of settlement on first marriage.

WHEREAS by an indenture dated, &c., and made, &c. (being the settlement made in consideration of the marriage of the said C. B., then C. D., with her deceased husband A. B.), it was agreed and declared (among other things), that the trustees

UPON SECOND MARRIAGE OF A LADY.

for the time being of the said indenture should after the decease of such one of them the said A. B. and C. B. as should first die, pay the income of the trust funds thereby settled, and which are therein called "the husband's trust funds" and "the wife's trust funds" respectively, to the survivor of them during his or her life, and should after the decease of such survivor hold the said trust funds IN TRUST for all or such one or more of the children and remoter issue of the said then intended marriage as the said A. B. and C. B. or the survivor of them should in manner therein mentioned appoint, and in default of such appointment, IN TRUST for all the children of the said then intended marriage, who, being a son or sons, should attain the age of twenty-one years, or being a daughter or daughters should attain that age or marry, in equal shares, with an ultimate trust in default of issue of the said then intended marriage as regards the wife's trust funds for the said C. B. absolutely: AND it was also declared that, &c. (*set out fully power to appoint to future husband and to issue of future marriage, being Article 6 of Precedent No. XV.*): AND WHEREAS the said A. B. died on the —— day of ——, 18—, leaving the said C. B. his widow and four children by her —— (*state names of children*), all of whom are infants and unmarried: AND WHEREAS the trust funds in the said indenture of settlement called "the husband's trust funds," now consist of or are represented by the following particulars, namely (*state particulars*), and the trust funds in the said indenture of settlement called "the wife's trust funds," now consist of or are represented by the following particulars, namely (*state particulars*): AND WHEREAS a marriage is intended shortly to be solemnized between the said C. B. and the said X. Y.: AND upon the treaty for the said intended marriage it was agreed that such settlement should be made as is hereinafter expressed: NOW THIS INDENTURE WITNESSETH, that in consideration of the said intended marriage, IT IS HEREBY AGREED AND DECLARED, between and by the parties hereto, and the said C. B., in exercise of all powers for this purpose vested in her by the said indenture of settlement or otherwise, doth hereby direct and appoint as follows:—

Death of first husband leaving children.

Present state of trust funds.

Agreement for intended marriage and for settlement.

Witnessing part.

Agreement and appointment.

1. THE trustees for the time being of the hereinbefore recited indenture (hereinafter called "the trustees"), shall pay the income of all the trust funds settled by the said indenture to the

Income of trust funds shall be paid to wife for her separate use

UPON SECOND MARRIAGE OF A LADY.

said C. B. during her life, pursuant to the trust in that behalf declared by the said indenture for her separate use, and so that she shall not have power while under coverture to dispose thereof in the way of anticipation.

without power of anticipation.

2. FROM and after the decease of the said C. B. the trustees shall stand possessed of one equal third part of the trust funds in the said indenture and hereinafter called "the wife's trust funds," IN TRUST to pay the income thereof to the said X. Y. during his life, and after his decease, IN TRUST for, &c. (*Trusts for issue as husband and wife or survivor shall appoint, and in default of appointment for children equally—sons at twenty-one, and daughters at twenty-one or marriage—Hotchpot clause, supra*, pp. 316, 317).

One-third of trust funds after decease of wife to go to intended husband's life and after his decease to issue of intended marriage.

3. IF one of the said four children of the said C. B., by her late husband, A. B., shall die, being a son, under the age of twenty-one years, or being a daughter under that age and without having been married, then and in such case and from and after the death of the said C. B. or the death of such child (which event shall last happen), the trustees shall stand possessed of one-sixth part of the wife's trust funds, in addition to the one-third part mentioned in Article 2, and making therewith one moiety of the wife's trust funds, UPON the trusts and with and subject to the powers and provisions declared by Article 2 concerning one-third part of the wife's trust funds, or such of them as shall be then subsisting and capable of taking effect.

If one of four children of former marriage shall die under twenty-one, &c., a further one-sixth to go upon similar trusts.

4. IF three of the said four children of the said C. B. by the said A. B. deceased shall die, being a son or sons, under the age of twenty-one years, or being a daughter or daughters under that age and without having been married, then and in such case, and from and after the death of the said C. B., or the death of such one of them the said three children so dying as aforesaid as shall last die (which of the said events shall last happen), the trustees shall stand possessed of one other sixth part of the wife's trust funds, in addition to the one-third part and one-sixth part mentioned in Articles 2 and 3 respectively, and making therewith two full third parts of the wife's trust funds, UPON the trusts and with and subject to the powers and provisions declared by Article 2 concerning one-third part of the wife's trust funds, or such of them as shall be then subsisting and capable of taking effect.

If three of said four children shall die under twenty-one, &c., a further one-sixth to go upon similar trusts.

UPON SECOND MARRIAGE OF A LADY.

[5. PROVIDED ALWAYS (*s*), that the portion of the wife's trust funds to which the issue of the now intended marriage shall become entitled between them under the trusts and provisions of these presents shall not bear a greater proportion to the residue of the wife's trust funds than is limited and provided in that behalf by the hereinbefore recited indenture, and if the portion hereinbefore expressed to be appointed in favour of the issue of the now intended marriage shall exceed the aforesaid proportion, then and in such case the trusts hereby declared in favour of such issue shall be void so far as regards the excess, but subject and without prejudice to the life interest of the said X. Y. therein.]

Proviso that issue of now intended marriage shall not take a greater proportion than issue of former marriage.

6. IF neither of the said four children of the said C. B. by the said A. B. deceased, and no issue of any such child shall become absolutely entitled to the residue not hereinbefore appointed of the wife's trust funds under the trusts and powers of the hereinbefore recited indenture, then and in such case, and subject to the same trusts and powers, and from and after the death of the said C. B. or such failure of issue as aforesaid (which shall last happen), the trustee shall stand possessed of the entirety of the wife's trust funds, UPON the trusts and with and subject to the powers and provisions declared by Article 2 concerning one-third part of the wife's trust funds, or such of them as shall then be subsisting and capable of taking effect.

Declaration of trust of entire trust funds, in case no issue of former marriage shall attain a vested interest.

Upon same trusts as before declared concerning appointed one-third.

7. (*Advancement clause, supra*, p. 317.)

8. IF no child of the said C. B. by the said A. B. deceased or by the said X. Y. shall become absolutely entitled to the wife's trust funds under the trusts and powers of the hereinbefore recited indenture and of these presents respectively, then and in such case and subject to the same trusts and powers, the trustees shall stand possessed of the wife's trust funds, IN TRUST for, &c. (*Ultimate trust for the wife or her appointees by will or next of kin supra*, p. 317.)

If no issue of either marriage ultimate trust for wife or her appointees by will or next of kin.

9. THE power of appointment among the children and remoter issue of the said C. B. by the said A. B. deceased now vested in the said C. B. as having survived the said A. B. under the

Power of appointment among issue of former marriage to remain in force.

(*s*) If the proviso at the end of paragraph 6 in the last Precedent is omitted, the above proviso will be omitted also.

UPON SECOND MARRIAGE OF A LADY.

hereinbefore recited indenture, shall remain in full force and be exercisable by her notwithstanding her now intended coverture so far as regards the residue not subject to these presents of the wife's trust funds.

IN WITNESS, &c.

No. XVII.

UPON SECOND MARRIAGE OF A LADY.

SETTLEMENT *upon the* SECOND MARRIAGE *of a* LADY *in exercise of* POWERS *in* FORMER SETTLEMENT (*Another form*). AGREEMENT *to settle* OTHER PROPERTY *of* WIFE *in favour of* ISSUE *of* BOTH MARRIAGES.

THIS INDENTURE (*the same as last Precedent, down to the beginning of the first paragraph, except that Article* 6A *instead of Article* 6 *of Precedent No. XV. is recited*).

Wife to receive income of all the settled trust funds for her separate use without power to anticipate.

1. AFTER the said marriage the said E. F., G. H., and I. K. (hereinafter called "the trustees") shall pay the income of all the trust funds settled by the said indenture to the said C. B., so that during her now intended coverture the same shall be for her sole and separate use, and she shall not have power to dispose thereof in the way of anticipation.

Income of a moiety of wife's trust funds to be paid to her husband [or until second marriage, bankruptcy, &c.].

2. IF the said X. Y. shall survive the said C. B. the income of one moiety of the trust funds in the said indenture of settlement and hereinafter called the wife's trust funds, shall after the decease of the said C. B. be paid to the said X. Y. during his life [or until he shall marry again or shall assign or charge the said income, or any part thereof, or become bankrupt, or do or suffer any other thing whereby the said income, or any part thereof, if belonging absolutely to him, would become vested in any other person or persons, in either of which events the interest of the said X. Y. shall cease as if he were dead].

Certain proportion of wife's trust funds to form "future

3. FOR the purposes of these presents the wife's trust funds shall be considered as divided into so many equal parts as there shall be children of the said C. B., as well by the said A. B.

UPON SECOND MARRIAGE OF A LADY.

deceased as by the said X. Y., who, being a son or sons, attain the age of twenty-one years, or being a daughter or daughters, attain that age or marry: And so many of the said equal parts as there shall be children of the said C. B. by the said X. Y., who, being a son or sons, attain the age of twenty-one years, or being a daughter or daughters, attain that age or marry, shall form together the fund which is hereinafter referred to as "the future children's trust fund."

children's trust fund."

Trusts of future children's trust funds.

4. The future children's trust fund shall, after the decease of the said C. B., and subject to the interest of the said X. Y., under Article 2, in exoneration so far as the same will extend of the residue of the wife's trust funds, go and be held In trust for, &c. (*Trust for issue of now intended marriage as husband and wife or survivor shall appoint, and in default of appointment, for children equally, and hotchpot clause, mutatis mutandis, supra*, pp. 316, 317).

5. (*Advancement clause, supra*, p. 317, *substituting* X. Y. *and* C. B. *for* A. B. *and* C. D.)

Power of appointment in settlement in favour of issue of former marriage to remain in force.

6. The power of appointment given to the said C. B. by the said indenture of settlement in favour of all or any of her issue by the said A. B. deceased, shall remain in full force so far as regards that part of the wife's trust funds which is not hereby appointed in favour of the issue of the now intended marriage.

Ultimate trusts in case of no issue of either marriage.

7. If there shall be no issue of the said C. B., either by the said A. B. deceased, or by the said X. Y., in whom the wife's trust funds shall become absolutely vested under the trusts and powers of the said indenture of settlement, or of these presents, then and in such case, and subject to the interest of the said X. Y., under Article 2, the trustees shall stand possessed of the wife's trust funds, In trust for, &c. (*Ultimate trust for wife or her appointees by will or next of kin, supra*, p. 317.)

Agreement to settle other property of wife.

8. All, &c. (*Agreement to vest in trustees after-acquired property of wife, supra*, p. 317, *but with the following variation in the trusts*): Upon trust that the trustees shall, at such time or times as they shall think fit, but as to reversionary property not until it shall fall into possession, sell, call in, and convert into money all such part of the said property as shall not consist of money or of investments of the nature authorized by the said indenture of settlement, and shall stand possessed of such part of the said property as shall consist of authorized investments, or of money uninvested, and also of the moneys to arise from such sale,

UPON SECOND MARRIAGE OF A LADY.

calling in, and conversion as aforesaid: UPON the trusts, and with and subject to the powers and provisions in and by the said indenture of settlement and these presents declared and contained of and concerning the wife's trust funds, or the moneys to arise from the sale and conversion thereof, or such of them as shall be then subsisting and capable of taking effect, and shall, in the meantime, and so long as any property hereinbefore directed to be sold and converted shall remain unsold and unconverted, pay the rents and income thereof to the person or persons and in the manner to whom and in which the income of the wife's trust funds shall, for the time being, be payable or applicable under the said indenture of settlement and these presents: PROVIDED ALWAYS, &c. (*Proviso as to any part of property consisting of annuity or income, supra*, p. 318, *substituting at the end the words* "under the said indenture of settlement or these presents" *for the words* "under the foregoing trusts").

Settlement to be void if marriage is not within twelve months.

9. THESE presents shall be void if the said intended marriage is not solemnized within twelve calendar months from the date hereof.

IN WITNESS, &c.

No. XVIII.

ON CHILDREN (EXCLUDING ELDEST SON).

SETTLEMENT *of a sum of* STOCK *in the usual form,* EXCEPT *that the* ELDEST SON *entitled as* TENANT IN TAIL *to* REAL ESTATE *under a* SETTLEMENT *of even date is to be* EXCLUDED.

Parties.

THIS INDENTURE, made the —— day of ——, 18—, BETWEEN A. B. of, &c. (*intended husband*), of the first part, C. D. of, &c. (*intended wife*), of the second part, and E. F. of, &c., G. H. of, &c., I. K. of, &c. (*trustees*), of the third part:

Recitals.

Agreement for marriage.

Settlement of real estate by deed of even date.

WHEREAS a marriage is intended shortly to be solemnized between the said A. B. and the said C. D.: AND WHEREAS by an indenture bearing even date with these presents, and made between (*parties*) in consideration of the said intended marriage, divers messuages, lands and hereditaments, in the

ON CHILDREN (EXCLUDING ELDEST SON).

county of ——, therein particularly described, have been settled to the use of the said A. B. for his life with remainder (subject to a jointure rent-charge payable to the said C. D.) to the use of the first and other sons of the said intended marriage successively in tail male, with divers remainders over: AND WHEREAS upon the treaty for the said intended marriage it was agreed that the sum of £—— India £4 per Cent. Stock belonging to the said C. D. should be settled upon the trusts and in the manner hereinafter expressed, and the same has accordingly been transferred into the names of the said E. F., G. H., and I. K., in the books kept at the Bank of England for that purpose: NOW THIS INDENTURE WITNESSETH, that in consideration of the said intended marriage it is hereby agreed and declared as follows:—

Agreement for settlement of stock.

Witnessing part.

1. (*Declaration of trust of stock for wife until marriage, and afterwards to retain or vary investments.*)

Trusts for wife and husband and issue.

2. THE trustees shall, &c. (*trust to pay income to wife for life for her separate use, without power of anticipation, and then to husband for life, supra*, p. 297): AND from and after the decease of the survivor of the said A. B. and C. D. shall stand possessed of the trust funds hereby settled, IN TRUST for the child or all or any of the children of the said intended marriage (except a son or sons excluded by Article 3, in the event therein mentioned), or any issue of such child or children, at such ages or times, or age or time (not being earlier as to any object of this power than his or her age of twenty-one years or day of marriage), in such shares, if more than one, upon such conditions, and in such manner as the said (*husband and wife or survivor, shall appoint, supra*, p. 316): AND in default of such appointment, and so far as any such appointment shall not extend, IN TRUST for all the children of the said intended marriage (except a son or sons excluded by Article 3, in the event therein mentioned), who, being a son or sons, shall attain the age of twenty-one years, or being a daughter or daughters shall attain that age or marry under that age, in equal shares, and if there shall be but one such child, then the whole to be in trust for such one child (*Hotchpot clause, supra*, p. 316): AND if there shall be no child of the said intended marriage who shall attain a vested interest in the said trust funds under the foregoing

ON CHILDREN (EXCLUDING ELDEST SON).

trusts, then IN TRUST, &c. (*Ultimate trust for wife or her appointees by will or next of kin, supra*, p. 317).

Eldest son to be excluded, if any other child who attains vested interest.

3. THE first born or only son of the said intended marriage, and also every other son (if any), who at the time when he attains the age of twenty-one years shall be entitled under the said indenture bearing even date with these presents to the hereditaments thereby settled for an estate in tail male in possession or in remainder immediately expectant on the decease of the said A. B., shall be excluded from all share in the trust funds hereby settled, if there shall be any other child or children of the said intended marriage, who being a son or sons shall attain the age of twenty-one years, or being a daughter or daughters shall attain that age, or marry, but not otherwise.

(*Remaining clauses as in former Precedents.*)

IN WITNESS, &c.

No. XIX.

FOR ISSUE OF HUSBAND AND WIFE RESPECTIVELY BY ANY MARRIAGE.

SETTLEMENT *by intended* HUSBAND *and* WIFE *for the benefit of their respective* ISSUE *as well by the* INTENDED MARRIAGE *as by any* FUTURE MARRIAGE *with appropriate Clauses* (*t*).

Parties and recitals.

THIS INDENTURE, &c. (*Parties. Recitals of agreement for intended marriage, and for settlement and transfer of trust funds by husband and wife respectively to the trustees*): NOW THIS INDENTURE WITNESSETH, that in consideration of the said intended marriage, IT IS HEREBY AGREED AND DECLARED between and by the parties hereto as follows:—

Witnessing part.

Trusts until marriage and for investment, &c.

1, 2. (*Trusts for husband and wife respectively until marriage, and for investment and varying investments.*)

(*t*) Where it is intended that only a limited portion of the settled property shall be disposable in favour of the issue of a future marriage, as is generally the case, the proper form is to make the settlement in the first instance in favour only of the issue of the intended marriage, with powers to the husband and wife respectively to make a settlement to the agreed amount in case of a future marriage. See Precedent No. XV., *supra*. The powers thereby given to the wife can be easily adapted so as to be made applicable to a husband.

FOR ISSUE OF HUSBAND AND WIFE RESPECTIVELY BY ANY MARRIAGE.

3. The trustees shall pay the income of the husband's trust funds to the said A. B. during his life, and after his decease to the said C. D. if she shall survive him, during her life, and if the said A. B. shall marry again, he may by any deed or deeds or by his will appoint that after his decease the said income or any part thereof shall be paid to any future wife of his who may survive him during her life or for any less period.

Income of husband's trust funds to go to husband and wife, and with power to husband to appoint same to future wife for life and after death of survivor same funds to go to issue of husband by any marriage as he shall by deed or will appoint,

4. After the decease of the said A. B. and C. D., and subject to any appointment which may be made to a future wife as aforesaid, the trustees shall stand possessed of the husband's trust funds, In trust for such child, children, or remoter issue of the said A. B., whether by his now intended marriage or by any future marriage, at such ages or times, or age or time (not being earlier as to any object of this power than his or her age of twenty-one years or day of marriage), in such shares, if more than one, upon such conditions, and in such manner as the said A. B. shall by any deed or deeds, or by his will appoint: [And in default of such appointment, and so far as any such appointment shall not extend, then In trust for such child, children or remoter issue of the now intended marriage at such ages or times, age or time (not being earlier as to any object of this power than his or her age of twenty-one years or day of marriage), in such shares, if more than one, upon such conditions, and in such manner as the said C. D., if she shall survive the said A. B., shall, by any deed or deeds, or by her will appoint] (*u*): And in default of such appointment, and so far as any such appointment shall not extend, In trust for all the children of the now intended marriage (*x*) who, being sons, shall attain the age of twenty-one years, or being daughters shall attain that age or marry under that age, in equal shares, and if there shall be only one such child, the whole to be in trust for that one child: And if, &c. (*Ultimate trust for husband absolutely, supra*, p. 294).

and in default of such appointment then for issue of intended marriage as wife surviving shall by deed or will appoint;

and in default of such appointment for children of intended marriage equally.

(*u*) The words in brackets will be omitted if, as is not unusual in such a case, the wife is not to have a power of appointment.

(*x*) Sometimes the trust in default of appointment is extended to the issue of a future marriage. This necessitates the insertion of a power of revocation in the event of there being a failure of issue of this marriage. The same object is attained in a simpler way by confining the trust to the children of the present marriage, leaving the husband to provide for the children of a future marriage by an exercise of his power.

FOR ISSUE OF HUSBAND AND WIFE RESPECTIVELY BY ANY MARRIAGE.

5. THE trustees shall pay the income of the wife's trust funds to, &c. (*wife for life for her separate use, without power of anticipation, and after her death to husband for life, supra*, p. 297), and if the said C. D. shall marry again, she may by any deed or deeds, or by her will, appoint that after her decease the said income or any part thereof shall be paid to any future husband of hers who may survive her during his life or for any less period.

Corresponding trusts of wife's trust funds.

6. AFTER the decease of the survivor of the said A. B. and C. D., and subject to any appointment which may be made to a future husband as aforesaid, the trustees shall stand possessed of the wife's trust funds, IN TRUST, &c. (*Trusts for issue of wife by present or future marriage as she shall by deed or will appoint* [*and in default of such appointment, for issue of intended marriage as husband if he survives wife shall by deed or will appoint*], *and in default of such appointment, for children of wife by present marriage equally, as in Article* 4, *mutatis mutandis*). AND if, &c. (*Ultimate trust for wife or her appointees by will, or next of kin, supra*, p. 297.)

Hotchpot clause.

7. No child who or any of whose issue shall take a share of any of the trust funds hereby settled under any appointment made by virtue of the foregoing powers in that behalf or any of them, shall take any share in the unappointed part, if any, of the said trust funds without bringing the share or shares appointed to him or her as to his or her issue into hotchpot and accounting for the same accordingly unless the persons or person making such appointment shall thereby direct the contrary.

Advancement clause.

8. THE trustees may at any time or times raise any part or parts not exceeding together a moiety of the vested or presumptive share of any child or grandchild of the said A. B. and C. D. or either of them, and may apply the money to be so raised for the advancement, preferment, or benefit of such child or grandchild as the trustees shall think fit, but so that no such advancement shall be made during the continuance of any prior interest or interests under these presents in the money proposed to be advanced without the consent in writing of the person or persons having such prior interest or interests.

(*Agreement to settle after-acquired property of wife, investment and appointment of new trustees clauses, and settlement to be void if marriage not within twelve months, supra*, pp. 317 to 320.)

IN WITNESS, &c.

No. XX.

CONVEYANCE *and* ASSIGNMENT *by the intended* HUSBAND *of an* UNDIVIDED SHARE IN REMAINDER *of* FREEHOLDS *and* LEASEHOLDS *to* TRUSTEES *on trust to* SELL, *either* AFTER *the determination of the* PRIOR LIFE ESTATE, *or* DURING *its* CONTINUANCE *with the concurrence of the* TENANT FOR LIFE, *and to hold the* PROCEEDS *upon the* TRUSTS *declared by a* DEED *of* EVEN DATE.

CONVEYANCE OF UNDIVIDED SHARE IN REMAINDER OF FREEHOLDS AND LEASEHOLDS, IN TRUST FOR SALE.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*intended husband*), of the first part, C. D. of, &c. (*intended wife*), of the second part, and E. F. of, &c., G. H. of, &c., and I. K. of, &c. (*trustees*), of the third part: WHEREAS a marriage has been agreed upon and is intended shortly to be solemnized between the said A. B. and the said C. D.: AND WHEREAS (*Recite will of X. Y. under which A. B. is entitled to an undivided third share of freeholds and leaseholds, subject to the life interest of R. B., his father*): AND WHEREAS upon the treaty for the said intended marriage it was agreed that the said undivided part or share of the said A. B., of and in the said freehold and leasehold hereditaments should be conveyed and assigned unto the said E. F., G. H., and I. K., upon the trusts and with and subject to the powers and provisions hereinafter declared and contained concerning the same: NOW THIS INDENTURE WITNESSETH as follows:—

Parties.

Recite agreement that share of freeholds and leaseholds should be conveyed and assigned to trustees.

Witnessing part.

1. IN consideration of the said intended marriage, the said A. B. as settlor hereby conveys unto the said E. F., G. H., and I. K. (hereinafter called "the trustees"), ALL THAT the one undivided third part or share of the said A. B., of and in ALL &c. (*Freehold parcels*): TO HOLD the same (subject to the said estate for life therein of the said R. B.) unto and to the use of the trustees in fee simple, IN TRUST for the said A. B, in fee simple, until the said intended marriage shall be solemnized: AND FROM AND AFTER the solemnization thereof, UPON THE TRUSTS and with and subject to the powers and provisions hereinafter declared and contained concerning the same.

Husband conveys share of freeholds (subject to prior life interest) to trustees.

CONVEYANCE OF UNDIVIDED SHARE IN REMAINDER OF FREEHOLDS AND LEASEHOLDS, IN TRUST FOR SALE.

Husband assigns undivided share of leaseholds to trustees, subject to prior life interest.

2. In consideration of the said intended marriage, the said A. B., as settlor, hereby assigns unto the trustees, All that the one undivided third part or share of the said A. B., of and in All that, &c. (*describe leasehold parcels as in lease*): All which hereditaments and premises were by an indenture dated the —— day of ——, and made between, &c. (*parties*), demised unto the said (*testator*), for the term of ninety-nine years thence next ensuing, at the yearly rent of £——, and subject to the covenants and conditions in the said indenture of lease contained, and on the part of the lessee to be observed and performed: To hold the same unto the trustees for the residue, now unexpired, of the said term of ninety-nine years, subject to the said estate for life therein of the said R. B., and subject also to a proportionate part of the said yearly rent of £——, reserved by the said indenture of lease, and to the covenants and conditions in the same indenture contained, and on the part of the lessee to be observed and performed so far as the same affect the said undivided share hereby assigned, or expressed so to be, Nevertheless, In trust for the said A. B., until the said intended marriage shall be solemnized, And from and after the solemnization thereof, upon the trusts, and with and subject to the powers and provisions hereinafter declared and contained concerning the same.

Trustees shall hold share of freeholds and leaseholds. In trust to sell.

3. The trustees shall, upon the request in writing of the said A. B. during his life, and after his death then upon the request in writing of the said C. D. during her life, and after the death of the survivor of the said A. B. and C. D. at the discretion of the trustees or trustee sell the undivided part or share hereby conveyed and assigned of and in the said freehold and leasehold premises respectively, at any time or times after the death of the said R. B. or in the lifetime of the said R. B., if he shall concur in such sale, but not otherwise, with liberty to sell the same part or share alone or in conjunction with the other undivided parts or shares of the said premises, or any or either of them, as the trustees shall think fit, and shall receive all the moneys to arise from the sale of the said undivided part or share, whether such sale shall be made in the lifetime of the said R. B. or after his death (including in the former case such portion of the said moneys as shall represent the life estate of the said R. B.), and shall with and out of the said moneys in the first place pay and

retain the costs and expenses attending such sale, and shall stand possessed of the residue of the said moneys, and also of the rents and profits of the said undivided part or share of and in the said premises, or such part thereof as shall not be sold in the lifetime of the said R. B. from and after the decease of the said R. B., and until the sale thereof, upon such trusts and with and subject to such powers and provisions as are or shall be declared concerning the same in and by an indenture already prepared and engrossed, bearing or intended to bear even date with these presents, and made or intended to be made between, &c. (*parties*).

CONVEYANCE OF UNDIVIDED SHARE IN REMAINDER OF FREEHOLDS AND LEASEHOLDS, IN TRUST FOR SALE.

4. Until the said undivided part or share hereby conveyed and assigned of and in all the said freehold and leasehold premises shall be sold as aforesaid, it shall be lawful for the trustees upon such request or at such discretion as aforesaid, to lease the same or any part thereof, either alone or in conjunction with the other undivided parts or shares of the same premises, or any of them, for any term of years not exceeding twenty-one years, to take effect in possession at the best rent that can reasonably be obtained for the same, without taking anything in the nature of a fine or premium, and under and subject to such covenants and conditions as the trustees shall think proper.

Power to lease.

5. It shall be lawful for the trustees at any time or times, upon such request or at such discretion as aforesaid, to concur with the owner or owners of the other undivided parts or shares of the said freehold and leasehold premises respectively in making a partition of the same premises or any of them, and upon any such partition to give or receive any money for equality of partition, with power to execute assurances and do all other acts and things for completing such partition which the trustees shall think proper, and the trustees shall stand and be seised and possessed of the premises to be acquired under any such partition as aforesaid, and of any moneys which may be received for equality of partition as aforesaid, upon the trusts and with and subject to the powers and provisions hereinbefore expressly and by reference declared and contained concerning the said undivided part or share hereby conveyed and assigned of and in the said freehold and leasehold premises, and the moneys to arise from the sale of the same undivided part or share respectively, And if any moneys shall be required to be paid by the trustees for equality of partition as aforesaid, the same may be so paid

Power to make partition.

CONVEYANCE OF UNDIVIDED SHARE IN REMAINDER OF FREEHOLDS AND LEASEHOLDS, IN TRUST FOR SALE.

out of any moneys in their hands arising from any sale which may have been previously made under the aforesaid trust in that behalf.

6. The power, &c. (*Clause as to appointment of new trustees, supra*, p. 320).

In witness, &c.

No. XXI.

APPOINTMENT OF PORTION CHARGED ON REAL ESTATE.

APPOINTMENT *in contemplation of a* Daughter's Marriage *of a* Sum *of* Money, *to be raised under the* Trust *of a* Term *for raising* Portions *for* Younger Children *contained in a* Settlement *of* Real Estate, *to* Trustees *upon* Trusts *declared by a* Deed *of even date* (*y*).

Parties.

THIS INDENTURE, made the —— day of ——, 18—, Between N. D. of, &c. (*father of intended wife*), of the first part, C. D. of, &c. (*intended wife*), of the second part, A. B. of &c. (*intended husband*), of the third part, and E. F. of, &c., and G. H. of, &c., and I. K. of, &c. (*trustees*), of the fourth part: Whereas by an indenture of release, dated the —— day of ——, grounded on a lease for a year, and made between the said N. D., of the first part, O. D., now the wife of the said N. D. (then O. P., spinster), of the second part, &c. (*and other parties*) (being a settlement made in contemplation of the marriage then intended and shortly afterwards solemnized between the said N. D and the said O. P.), the manor of ——, and the capital and other messuages, lands, tenements, and hereditaments, situate in the parish of ——, in the county of ——, in the said indenture particularly described, were settled and assured to the use of the said N. D. during his life, without impeachment of waste, with remainder after his decease to the use that the said O. P., if she should survive the said N. D.,

(*y*) See note, *supra*, p. 310.

should receive thereout, during her life, a yearly rent-charge of £—— for her jointure, with usual powers for recovering the same when in arrear, and subject thereto to the use of the said P. Q. and R. S., their executors, administrators, and assigns, for the term of one thousand years, computed from the decease of the said N. D., upon the trusts therein declared concerning the same, and in part hereinafter mentioned, with remainder to the first and other sons of the said N. D. by the said O. P. successively in tail male, with remainders over; and it was declared that the said premises were limited to the said P. Q. and R. S., their executors, administrators, and assigns, for the said term of one thousand years as aforesaid, upon trust, in the first place, to secure in manner therein mentioned the regular payment of the said yearly rent-charge of £——, and in the next place, upon trust that if there should be any child or children of the said N. D. by the said O. P. (other than an eldest or only son entitled for the time being to the first estate tail in the said hereditaments under the limitations of the said indenture), then and in such case the said P. Q. and R. S., or the survivor of them, or the executors or administrators of such survivor, should after the decease of the said N. D., or in his lifetime upon his request in writing, levy and raise, in manner therein mentioned, as and for the portion or portions of such child or children (other than as aforesaid), the sum of money therein and hereinafter mentioned (that is to say), if there should be but one such child, the sum of £——, and if there should be two such children and no more, the sum of £——, and if there should be three or more such children, the sum of £——: the sum of £——, £——, or £——, as the case might be, to go and be paid to all or any of the children of the said N. D. by the said O. P., in such shares, and in such manner as the said N. D. should by any deed or deeds, with or without power of revocation and new appointment, or by his will, appoint: And whereas there are six children of the said N. D. by the said O. D., his wife (other than and besides their eldest son): And whereas a marriage is intended shortly to be solemnized between the said C. D., who is one of the said children, and the said A. B.: And whereas upon the treaty for the said intended marriage it was agreed that the said N. D. should appoint the sum of £——, part of

APPOINTMENT OF PORTION CHARGED ON REAL ESTATE.

That there are six younger children and intended wife is one.

Agreement for appointment and settlement.

APPOINTMENT OF PORTION CHARGED ON REAL ESTATE.

the money raisable for portions as aforesaid, as the share of the said C. D., and that the said C. D. should settle the same upon the trusts hereinafter mentioned, and it was further agreed that the appointment should be made at the request of the said C. D. directly to the said E. F., G. H., and I. K., as the trustees of the said intended settlement in the manner hereinafter expressed: NOW THIS INDENTURE WITNESSETH, that the said N. D., in exercise and in execution of the power for this purpose vested in him by the said indenture of settlement as aforesaid, and of all other powers (if any) him hereunto enabling, doth hereby at the request of the said C. D. (testified by her executing these presents) Appoint, that if the said intended marriage between the said C. D. and A. B. shall take effect before the expiration of twelve calendar months from the date of these presents, the sum of £——, part of the money by the said indenture directed to be raised for the portions of younger children as aforesaid, shall be the portion of the said C. D., and shall, upon the decease of the said N. D., be paid to the said E. F., G. H., and I. K., with interest thereon after the rate of £4 per cent. per annum, computed from the decease of the said N. D., to be held by them upon such trusts, and with and subject to such powers and provisions, as are or shall be expressed and declared concerning the same by an indenture already prepared and engrossed, bearing, or intended to bear, even date with these presents, and made, or intended to be made, between, &c. (*parties*).

Witnessing part.

Father appoints portion to daughter to be a vested interest on marriage, and to be paid to trustees upon trusts of deed of even date.

Clause as to appointment of new trustees.

And it is declared that (*Clause as to appointment of new trustees, supra*, p. 320).

In witness, &c.

No. XXII.

SETTLEMENT *by the intended* HUSBAND *of the* PROCEEDS *of sale of a Share of* FREEHOLDS *and* LEASEHOLDS *conveyed to* TRUSTEES *in trust for Sale by deed of even date, and by the intended* WIFE *of a* PORTION CHARGED *on* REAL ESTATE.

SETTLEMENT OF PROCEEDS OF SALE OF REVERSIONARY SHARE OF FREEHOLDS AND LEASEHOLDS, ETC.

THIS INDENTURE, made the —— day of ——, 18—, BETWEEN A. B. of, &c. (*intended husband*), of the first part, C. D. of, &c. (*intended wife*), of the second part, and E. F. of, &c., G. H. of, &c., and I. K. of, &c. (*trustees*), of the third part: WHEREAS a marriage is intended shortly to be solemnized between the said A. B. and the said C. D.: AND WHEREAS by an indenture bearing even date with these presents, and made between, &c., the said A. B., in consideration of the said intended marriage, has conveyed and assigned one undivided third part or share of and in certain freehold and leasehold hereditaments therein described unto the said E. F., G. H., and I. K., subject to the estate for life therein of R. B. (the father of the said A. B.), UPON trust after the solemnization of the said intended marriage, that the trustees shall, upon such request or at such discretion as therein mentioned, sell the said undivided part or share of and in the said several freehold and leasehold premises at any time or times after the decease of the said R. B., or in his lifetime if he shall concur in the said sale, but not otherwise: AND shall receive all the moneys to arise from the sale of the said undivided share, whether such sale shall be made in the lifetime of the said R. B., or after his death (including in the former case such portion of the said moneys as shall represent the life estate of the said R. B.), and shall with and out of the moneys in the first place pay and retain the costs and expenses attending such sale, and shall stand possessed of the residue of the said moneys, and also of the rents and profits of the said undivided part or share of and in the said premises or such part thereof as shall not be sold in the lifetime of the said R. B., from and after the decease of the said R. B. and until the sale thereof, upon the trusts, and with and subject

Parties.

Recital of intended marriage.

Deed of even date, being conveyance by husband of reversionary share of freeholds and leaseholds upon trust for sale.

SETTLEMENT OF PROCEEDS OF SALE OF REVERSIONARY SHARE OF FREEHOLDS AND LEASEHOLDS, ETC.

to the powers and provisions to be declared concerning the same by an indenture therein mentioned, meaning these presents: And in the said indenture now in recital is contained a power enabling the trustees to concur with the owners of the other undivided shares of the said premises, or any of them, in making partition thereof, with liberty to give or receive any money for equality of partition, and a declaration that the trustees shall stand possessed of the premises to be acquired under any such partition as aforesaid, and also of any moneys which may be received for equality of partition as aforesaid, upon the trusts and with and subject to the powers and provisions thereinbefore expressly and by reference declared and contained concerning the undivided part or share thereby conveyed and assigned respectively of and in the said freehold and leasehold premises, and the moneys to arise from the sale of the same undivided share respectively: And whereas by another indenture bearing even date with these presents, and made between, &c. (*parties*), the said N. D. has at the request of the said C. D. and A. B. appointed the sum of £—— part of a sum of money raiseable for portions under an indenture of settlement therein referred to and charged on real estate, and which sum of £—— will become payable on the decease of the said N. D., unto the said E. F., G. H., and I. K., upon the trusts, and with and subject to the powers and provisions therein referred to, being the trusts, powers, and provisions hereinafter declared and contained concerning the same: NOW THIS INDENTURE WITNESSETH, that in consideration of the said intended marriage, It is hereby agreed and declared as follows:—

With power of partition.

Another deed of even date, being appointment of wife's portion to trustees.

Witnessing part.

Declaration that trustees shall invest proceeds of sale of share of freeholds and leaseholds.

1. If the undivided part or share conveyed and assigned by the first hereinbefore recited indenture of and in the said freehold and leasehold premises respectively, or any part thereof, or any hereditaments which may be acquired by virtue of any partition made under the power in that behalf contained in the same indenture, shall be sold after the decease of the said R. B., or if any moneys shall be received for equality of partition under any such partition as aforesaid, the said E. F., G. H., and I. K. (hereinafter called "the trustees"), shall, with the consent in writing of the said A. B. and C. D. during their joint lives, and of the survivor of them during his or her life, and after the decease of such survivor at the discretion of the trustees, invest

SETTLEMENT OF PROCEEDS OF SALE OF REVERSIONARY SHARE OF FREEHOLDS AND LEASEHOLDS, ETC.

the several moneys to be received by them from any such sale or for equality of partition as aforesaid, when and as the same respectively shall be received, with power from time to time, with such consent or at such discretion as aforesaid, to vary the investments thereof. The said moneys, and the investments for the time being representing the same, are hereinafter called the "husband's trust funds."

Trustees to receive portion of wife and invest, &c.

2. THE trustees shall, upon the receipt of the said sum of £——, appointed and assigned by the secondly hereinbefore recited indenture, with such consent or at such discretion as aforesaid, invest the same, with power from time to time with the like consent or at the like discretion to vary the investments thereof. The said sum of £——, and the investments for the time being representing the same, are hereinafter called the "wife's trust funds."

3, 4. (*Trusts and powers as in Precedent No. X., Articles* 4, 5, *supra*, pp. 316, 317.)

Trusts of rents until sale.

5. IF the said part or share of and in the said freehold and leasehold premises respectively, or any part thereof, shall remain unsold at the decease of the said R. B., the trustees shall until the sale thereof pay the net rents and profits thereof, or of any hereditaments which may be acquired under any partition as aforesaid, to the person or persons and in the manner to whom and in which the income of the moneys produced by the sale thereof would for the time being be payable or applicable under the foregoing trusts if such sale had been made.

Declaration of trusts in case of a sale during life of tenant for life.

6. IF the said part or share of and in the said freehold and leasehold premises, or any part thereof, shall be sold in the lifetime of the said R. B., then and in such case the trustees shall stand possessed of the moneys to arise from such sale, UPON the same trusts and with and subject to the same powers and provisions as are hereinbefore declared and contained concerning the moneys to arise from any sale which may be made after the decease of the said R. B. of the same undivided part or share, save and except that every investment or variation of investment of the said moneys made in the lifetime of the said R. B. shall be with his consent in writing, as well as with the consent in writing of the said A. B. and C. D., or the survivor of them, and that the income of the said moneys, or the investments for

SETTLEMENT OF PROCEEDS OF SALE OF REVERSIONARY SHARE OF FREEHOLDS AND LEASEHOLDS, ETC.

the time being representing the same, shall be paid to the said R. B. during his life.

7 to 10. (*The same as clauses 7 to 10 in Precedent No. X. supra*, pp. 318 to 320.)

Settlement to be void, if marriage not solemnized within twelve months

11. THESE presents shall be void if the said intended marriage shall not be solemnized within twelve calendar months from the date hereof.

IN WITNESS, &c.

No. XXIII.

SETTLEMENT OF SHARE OF RESIDUARY ESTATE.

SETTLEMENT *by intended* WIFE *of a share of the* PROCEEDS *of* RESIDUARY REAL *and* PERSONAL ESTATE *under a* WILL; *with* SPECIAL POWERS *in relation to the* RESIDUARY ESTATE.

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*intended husband*), of the first part, C. D. of, &c. (*intended wife*), of the second part, and E. F. of, &c., G. H. of, &c., and I. K. of, &c. (*trustees*), of the third part: WHEREAS

Recite agreement for marriage.

a marriage is intended shortly to be solemnized between the said A. B. and the said C. D.: AND WHEREAS

That intended wife is entitled to a share of residuary estate under will.

(*Recite will of X. Y. giving residuary real and personal estate to trustees upon trusts for sale and conversion, and for payment of income to testator's widow for life, and after her death to divide corpus between C. D. and others, and death of testator*): AND WHEREAS

That particulars of estate are set forth in schedule.

in the schedule hereunder written are set forth, 1st, the particulars of the moneys, stocks, funds, and securities now constituting or representing the residuary personal estate of the said testator, and the proceeds of so much of his real estate as has been sold; and 2ndly, the particulars of the real estate still remaining unsold: AND

Agreement for settlement.

WHEREAS upon the treaty for the said intended marriage, it was agreed that such settlement should be made as is hereinafter expressed: NOW THIS INDENTURE, made in considera-

Witnessing part.

tion of the said intended marriage, WITNESSETH and declares as follows:—

SETTLEMENT OF SHARE OF RESIDUARY ESTATE.

1. THE said C. D., as settlor, hereby assigns unto the said E. F., G. H., and I. K. (hereinafter called "the trustees of these presents"), ALL THAT the one —— part or share or other the part or share of her the said C. D. expectant on the decease of the said ——, under or by virtue of the said will of the said X. Y., deceased, of and in the moneys, stocks, funds, and securities now or hereafter constituting or representing the residuary personal estate of the said testator, and such part of his real estate as has been sold, and also of and in the money to arise from the sale of the real estate of the said testator still remaining unsold, and the stocks, funds, and securities in or upon which the same shall be invested, and of and in the rents and profits of the said real estate until the sale thereof: TO HOLD the same unto the trustees of these presents, IN TRUST for the said C. D., until the said intended marriage, and after the solemnization thereof upon the trusts and with and subject to the powers and provisions hereinafter declared and contained concerning the same.

Assignment by intended wife of moiety of residuary estate.

To trustees upon trusts after declared.

2 to 7. (*Usual trusts and powers in settlement of a wife's fortune as in one of the former Precedents.*)

8. THE trustees of these presents may, with the consent in writing of the said A. B. and C. D. during their joint lives, and of the survivor of them during his or her life, and after the decease of such survivor at the discretion of the trustees, make or concur in any arrangement with the executors or trustees for the time being of the said will of the said X. Y., or the beneficiaries under the said will (other than the said C. D.), or any of them, for or in relation to the distribution and partition of the real and personal estate of the said X. Y., or the proceeds thereof, and may accept and take any part of the said real and personal estate in lieu of and by way of satisfaction for the share hereby assigned by the said C. D. of and in the proceeds of the said estate, without insisting upon a sale and conversion of the said real and personal estate and the division of the proceeds thereof in strict accordance with the directions of the said will, and in case any freehold, copyhold, or leasehold hereditaments shall be acquired by the trustees of these presents by virtue of any such arrangement as aforesaid, such freehold, copyhold, or leasehold hereditaments shall be held by the said trustees upon the same

Power to trustees to make arrangements with executors of will as to the distribution of the testator's estate.

SETTLEMENT OF SHARE OF RESIDUARY ESTATE.

trusts, and with and subject to the same powers and provisions, as are hereinbefore declared and contained concerning any hereditaments to be purchased with the proceeds of the trust premises hereby settled by the said C. D. under the power in that behalf hereinbefore contained.

Special powers to trustees as to share in residuary real and personal estate.

9. The trustees of these presents may pass and allow the accounts of the executors or trustees of the said will of the said X. Y. relating to the estate and effects of the said X. Y., or dispute or disallow the same, and also may institute or defend all such actions, or other proceedings for the recovery of the share of the said C. D. of and in the said estate and effects, or any part thereof, or in relation thereto, as the trustees of these presents shall deem expedient, and may compromise, compound, and submit to arbitration all such questions, disputes, doubts, or differences as may arise in relation to the premises or any part or parts thereof, and generally act in relation thereto as they shall think fit: And in case any question shall arise whether any money or other property received by the trustees of these presents in respect of the estate and effects of the said X. Y. ought to be treated as *corpus* or income for the purposes of these presents, every or any such question shall be decided by the said trustees in such manner as they under the advice of counsel or otherwise shall think proper: And every act, deed, and thing done or executed by the trustees of these presents under any of the powers hereinbefore contained (including any decision as to whether any such money or property as aforesaid ought to be treated as *corpus* or income), shall be binding on all the persons beneficially interested under the trusts of these presents.

10. (*Appointment of new trustees clause, supra*, p. 320.)

Settlement to be void if marriage not within twelve months.

11. If the said intended marriage shall not be solemnized within twelve calendar months from the date hereof, then and in such case these presents shall be void, and the premises hereby settled by the said C. D. shall remain her absolute property.

In witness, &c.

The Schedule above referred to.

No. XXIV.

SETTLEMENT *of* PERSONALTY, *with* POWER *to* TRUSTEES *to purchase an* ADVOWSON, *and* TRUSTS *of same.*

OF PERSONALTY WITH POWER TO PURCHASE ADVOWSON.

THIS INDENTURE, made the —— day of ——, BETWEEN the Rev. A. B. of, &c. (*intended husband*), of the first part, C. D. of, &c. (*intended wife*), of the second part, and E. F. of, &c., G. H. of, &c., and I. K. of, &c. (*trustees*), of the third part (*the same as Precedent No. II. or any of the preceding Precedents, down to the end of the ordinary trusts and powers—Power to invest in the purchase of land*): PROVIDED ALWAYS, and it is hereby agreed and declared, that it shall be lawful for the trustees at any time during the life of the said A. B., upon his request in writing, and with the consent of the said C. D., if she shall be then living, to raise by the sale or conversion into money of a competent part of the trust funds and premises for the time being subject to the trusts of these presents [or the trust funds and premises hereby settled on the part of the said A. B.], any sum of money not exceeding the sum of £——, and to apply the same in the purchase of the advowson or perpetual right of presentation to any ecclesiastical benefice in England or Wales to be conveyed to the trustees, and to be held by them upon the trusts following (that is to say), UPON TRUST that the trustees shall, upon the request in writing of the said A. B. and C. D., during their joint lives, or of the survivor of them during his or her life, and from and after the decease of such survivor, then at the discretion of the trustees, sell the same advowson or perpetual right of presentation, or the next one or more presentation or presentations in the same benefice, and shall stand possessed of the proceeds of such sale or sales, after payment of the expenses attending the same, upon the same trusts and with the same powers and provisions as the money laid out in the purchase of such advowson or perpetual right of presentation would have been subject to if the same had not been so laid out: and in the meantime, and until such sale as aforesaid, and in case of any sale of a next presentation, then

Parties.

Power to trustees to purchase advowson.

Trustees to hold advowson when purchased in trust to sell,

and until sale

OF PERSONALTY WITH POWER TO PURCHASE ADVOWSON.

subject to such sale, In trust for the said A. B. during his life, and after his decease, In trust for the person or persons who, if the said advowson had been sold, would for the time being be entitled under these presents to the income of the trust funds representing the proceeds thereof, and so that during the minority of any person who if of full age would for the time being be entitled to nominate or join in the nomination to the said benefice under the trusts now being declared, the guardian or guardians of such minor shall have the like right to nominate or join in the nomination as the minor would have had if he or she had been of full age (*z*): Provided always, and it is

in trust for husband for life, and after his decease upon trust for persons who would be entitled to income of proceeds of sale if advowson had been sold.

Proviso that it

Trusts to present a particular person to a benefice, whether valid.

(*z*) In the earlier editions of this work, the trusts of the advowson in the above Precedent were in the form of a direction to present certain specified or indicated persons so long as it should remain unsold. Trusts of this kind are not uncommon, particularly in wills. Their validity does not appear to have been questioned in any reported case, but it is conceived that if it were so, there would be some difficulty in sustaining them. A right of presentation is a right coupled with a public duty, and it is conceived that any agreement or arrangement by which a patron is prevented, when a vacancy happens, from selecting such clerk as he may conscientiously believe to be the most proper individual for supplying the living, would be held void, independently of the statutes against simony, as contrary to public policy. See the judgment of Hullock, B., Fletcher *v.* Lord Sondes, 1 Bligh, N. S. 190. Speaking of a bond of resignation (which was decided to be void), the learned judge says: "The patron thereby becomes precluded from choosing the most proper individual for supplying the living. If he act in the presentation according to the condition of the bond, his choice is fixed long before the fitness of the object can be ascertained. At the execution of the bond, the nominee may be at college, or perhaps at school, or perhaps in his cradle." Special bonds of resignation are now rendered valid by statute under certain conditions; but the force of the above reasoning is not thereby diminished, and it applies with still greater force to a trust of the kind above referred to than to a bond of resignation; because, under the latter, the patron has the option whether to enforce it or not: whereas, under the former, the trustee is absolutely tied to present the particular person. See also Potter *v.* Chapman, Ambler, 100. In the case of Webb *v.* Byng, 2 K. & J. 669, a testatrix gave to A. the "livings of Q. and C., should he like the profession, and be qualified for them." Wood, V.-C., held that the devise was confined to a single presentation, and did not extend to the advowson, as the words "should he like," &c., showed an intention to confer on the devisee a personal benefit which could only be effected by his being himself presented. This case seems to have decided that the testatrix, by the gift of the livings to A., meant that A. should be presented, which intention could only, it is apprehended, be carried into effect by supposing a trust vested in the heir-at-law for that purpose. The question whether such a trust could be enforced does not seem to have been raised; and it is submitted, therefore, that this case is not an authority against the view expressed in the former part of this note. Having regard to the above observations, it is submitted that when an advowson is made the subject of a settlement, or is authorized to be pur-

OF PERSONALTY WITH POWER TO PURCHASE ADVOWSON.

hereby agreed and declared, that if the trustees shall think fit, it may, with the consent in writing of the said A. B. and of the said C. D., if she shall be then living, be made part of the arrangement on the purchase of such advowson as aforesaid, either that the vendor shall receive the purchase-money upon the completion of the purchase, and pay to the trustees interest thereon, computed from the time of such payment, until a vacancy shall happen in the benefice the advowson whereof shall be so purchased as aforesaid, after such rate not exceeding £5 per cent. per annum, and to be secured in such manner as shall be agreed upon between the parties, or that the purchase-money shall be paid to the vendor upon and not before the happening of such vacancy, and shall in the meantime be invested in the names of trustees to be nominated for that purpose, UPON TRUST to pay the annual income thereof to the trustees of these presents until the happening of such vacancy, and from and after such vacancy, IN TRUST for the vendor (*Provision as to appointment of new trustees, supra*, p. 320).

may be made part of arrangement on purchase of advowson, that vendor shall pay interest on purchase-money until vacancy, or that purchase-money shall be invested until vacancy and income received by purchaser.

IN WITNESS, &c.

chased out of the trust funds, the deed should simply declare who are to be the *cestuis que trust* of such advowson, *i. e.*, of the right to present, and not who are the persons to be presented. A *cestui que trust* of the right could nominate himself, and the trustee would be bound to present him; all that is necessary is that the beneficial patron for the time being should have a free choice.

No. XXV.

OF MONEY IN NEW ZEALAND.

SETTLEMENT *of a sum of Money transmitted to Trustees in* NEW ZEALAND (*a*) *for the benefit of the* WIDOW *and* CHILDREN *of the Settlor's deceased* SON.—*Ample powers of* INVESTMENT.—INCOME *to be applied for the benefit of* WIDOW *and* CHILDREN *until youngest child attains twenty-one, and then* ANNUAL SUM *to be paid to* WIDOW *during* WIDOWHOOD; *and subject thereto,* TRUST FUND *to go to* CHILDREN.—POWER *to* SETTLOR *to* REVOKE *and* DECLARE NEW TRUSTS *for benefit of same objects.*

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of ——, in England, Esq. (*settlor*), of the one part, and C. D. and E. F., both of ——, in New Zealand, gentlemen (*trustees*), of the other part: WHEREAS G. B. (a son of the said A. B.) lately died in New Zealand, leaving H. B. his widow, and leaving also four children by the said H. B.: AND WHEREAS the said A. B. has lately transmitted the sum of £—— to the said C. D. and E. F. to the intent that they may stand possessed thereof upon the trusts and with and subject to the powers and provisions hereinafter expressed concerning the same: NOW THIS INDENTURE WITNESSETH, that IT IS HEREBY AGREED AND DECLARED, and in particular the said A. B., in consideration of his natural love and affection for the objects of the settlement intended to be hereby made, doth hereby direct and declare, that the said C. D. and E. F., their executors, administrators, and assigns, shall stand possessed of the said sum of £——, UPON the trusts and with and subject to the powers and provisions expressed in the following articles (that is to say):—

Recite death of settlor's son, leaving widow and children.

That settlor has transmitted money to trustees.

Witnessing part.

Settlor directs trustees to hold money upon following trusts.

Trustees to invest money.

1. THE said C. D. and E. F., or the survivor of them (hereinafter called "the trustees or trustee"), shall invest the said sum

(*a*) The New Zealand Trustee Act, 1883, embodies most of the provisions contained in English Acts in relation to trustees, including provisions for the appointment of new trustees, that receipts of trustees shall be sufficient discharges, and for indemnity of trustees.

of £—— in their or his names or name or under their or his control upon any government real or personal securities, whether in the United Kingdom or in New Zealand, as the trustees or trustee shall in their or his discretion think fit, and may from time to time vary the said securities for any other securities of the like nature. The said sum of £—— and the securities upon which the same shall from time to time be invested are hereinafter called the "trust fund." OF MONEY IN NEW ZEALAND.

2. The trustees or trustee shall, during the minority of the youngest child for the time being of the said G. B. deceased, apply the whole or such part as they or he shall think fit of the income of the trust fund for or towards the support, maintenance, and benefit of the said H. B. and the children of the said G. B. deceased, or any one or more exclusively of the other or others of them the said H. B. and the said children, in such manner in all respects as the trustees or trustee shall in their or his absolute discretion think fit, and shall accumulate the surplus (if any) of the said income by investing the same and the resulting income thereof in manner aforesaid, to the intent that the accumulations shall be added to the principal trust fund and follow the destination thereof, with liberty nevertheless for the trustees or trustee at any time or times to resort to the accumulations of any preceding year or years, and apply the same for the support, maintenance, and benefit of the said H. B. and the said children or any one or more of them. During minority of youngest child, income to be applied for benefit of widow and children at discretion of trustees.

3. If the said H. B. shall be living and shall not have married again at the time when the youngest child for the time being of the said G. B. deceased attains the age of twenty-one years, the trustees or trustee shall thenceforth out of the income of the trust fund (including the said accumulations, if any) pay to the said H. B. the annual sum of £—— during her life if she shall so long continue the widow of the said G. B. deceased. When youngest child attains twenty-one, annual sum to be paid to widow during widowhood.

4. Subject to the annual sum provided by Article 3, if and while the same shall be payable, the trust fund (including the said accumulations, if any) shall, when and so soon as the youngest child for the time being of the said G. B. deceased attains the age of twenty-one years, go and be divided among all the children of the said G. B. deceased, who being sons shall Subject to annual sum, trust fund to go to children equally.

OF MONEY IN NEW ZEALAND.

attain the age of twenty-one years, or being daughters shall attain that age or marry, in equal shares, and so that the share of each such child shall be a vested and transmissible interest in such child being a son upon his attaining the age of twenty-one years, or being a daughter upon her attaining that age or marrying (which shall first happen), notwithstanding that he or she may die before the period of distribution.

Power to trustees, with consent of widow, and after her death or second marriage at their discretion, to raise money for advancement of children.

5. The trustees or trustee may at any time or times during the minority of the youngest child for the time being of the said G. B. deceased, with the consent in writing of the said H. B. during her widowhood, and after her second marriage or death (which shall first happen) at the discretion of the trustees or trustee, raise out of the trust fund any sum or sums of money and apply the same for the advancement or benefit of any child of the said G. B. deceased, and any sum or sums of money so applied for the advancement or benefit of any child shall be taken in part satisfaction of the ultimate share of such child in the said trust fund.

If no child attains a vested interest, trust fund to revert to settlor.

6. If no child shall attain a vested interest in the trust fund, the same (including the said accumulations), shall, subject to the trusts and powers hereinbefore declared and contained, revert to and be held in trust for the said A. B., his executors, administrators, and assigns.

Power to trustees to purchase any property in the United Kingdom or New Zealand as an investment.

7. The trustees or trustee may at any time or times at their or his discretion lay out the said trust fund (including the said accumulations) or any part thereof in the purchase of any real or personal property in the United Kingdom or in New Zealand of what nature or kind soever, and the trustees or trustee shall stand possessed of any property to be purchased as aforesaid, upon trust that they or he shall re-sell the same or any part thereof when and as they or he shall think fit, and shall stand possessed of the money to arise from such re-sale, upon the same trusts and with the same powers as are herein declared and contained concerning the said sum of £—— hereby settled, including the aforesaid power of purchasing property, and shall in the meantime and until such re-sale pay and apply the rent or income arising from the property to be purchased as aforesaid to the person or persons and in the manner to whom and in which the income of the money laid out in the purchase of such

property would for the time being be payable under the trusts of these presents if such purchase had not been made. OF MONEY IN NEW ZEALAND.

8. THE trustees or trustee may demise or let any land, or other property purchased under the aforesaid power and which shall remain unsold, for such term or terms of years at such rent or rents, and upon such conditions in all respects as they or he may think fit. Trustees may let any property purchased.

9. THE said A. B. may at any time during his life by any deed or deeds, with or without power of revocation and new appointment, revoke either wholly or partially the trusts and powers hereby declared concerning the trust fund hereby settled, or the moneys or property for the time being representing the same, and by the same or any other deed or deeds may appoint and declare any new or other trusts or powers concerning the trust premises to which such revocation shall extend as to him shall seem meet: but so that such new or other trusts or powers shall be for the benefit of the said H. B. and the children and remoter issue of the said G. B. deceased, or some or one of them. Power to settlor to revoke and declare new trusts in favour of the widow or issue of deceased son of settlor.

IN WITNESS, &c.

No. XXVI.

OF WIFE'S PROPERTY WITHOUT TRUSTS FOR CHILDREN.

SETTLEMENT *of* WIFE'S FREEHOLD *and* LEASEHOLD PROPERTY *and other* PERSONAL ESTATE *upon* TRUSTS *giving the* HUSBAND *and* WIFE *a* JOINT POWER *of* DISPOSITION, *and subject thereto for* WIFE *for life, then for* HUSBAND *for life, and then for* WIFE *absolutely or her* APPOINTEES, *but* WITHOUT *any* TRUSTS *for* CHILDREN.

THIS INDENTURE, made the —— day of ——, BETWEEN C. D. of, &c. (*intended wife*), of the first part, A. B. of, &c. (*intended husband*), of the second part, and E. F. of, &c., G. H. of, &c., and I. K. of, &c. (*trustees*), of the third part. (*Recite agreement for marriage.*) AND WHEREAS the said C. D. is seised in Parties. Recital of title.

OF WIFE'S PROPERTY WITHOUT TRUSTS FOR CHILDREN.

fee simple of the freehold hereditaments described in the first schedule hereto, and she is possessed of the leasehold hereditaments described in the second schedule hereto for the residue of the terms of years subsisting therein respectively, and she is also possessed of or entitled to the stocks, funds, and securities specified in the third schedule hereto: AND WHEREAS upon the treaty for the said intended marriage it was agreed that such settlement should be made as is hereinafter expressed, and with a view to the said intended settlement the stocks, funds, and securities specified in the third schedule hereto have been transferred into the names of or otherwise made to vest in the parties hereto of the third part before the execution of these presents:

Agreement for settlement.

NOW THIS INDENTURE, made in consideration of the said intended marriage, WITNESSETH AND DECLARES as follows:

Conveyance of freeholds, to such uses as husband and wife shall jointly appoint, and subject thereto to use of wife for life, then to husband for life, with remainder to wife in fee simple.

1. THE said C. D., as settlor, hereby conveys unto the said parties hereto of the third part (hereinafter called "the trustees"), ALL those freehold hereditaments described in the first schedule to these presents: To HOLD the same unto the trustees in fee simple, To THE USE of the said C. D. in fee simple until the said intended marriage, and after the said marriage To SUCH USES as the said A. B. and C. D. shall by any deed or deeds jointly appoint; AND in default of and until such appointment, and so far as any such appointment shall not extend, To THE USE of the trustees during the life of the said C. D., in trust for the said C. D. for her separate use (*b*) without impeachment of waste; AND after her decease TO THE USE of the said A. B. during his life without impeachment of waste, with remainder To THE USE of the said C. D. in fee simple.

Assignment by wife of leaseholds.

2. THE said C. D., as settlor, hereby assigns unto the trustees, THE leasehold hereditaments described in the second schedule hereto: To HOLD the same unto the trustees for all the residue now unexpired of the several terms of years subsisting therein respectively under the several leases mentioned and referred to in the said second schedule, subject nevertheless to the rents reserved by the said leases respectively and to the

To trustees.

(*b*) It is not safe to omit the words "for her separate use" having regard to sect. 19 of the Married Women's Property Act, 1882.

covenants and conditions in the said leases respectively contained, and on the lessees' part to be observed and performed; Nevertheless IN TRUST for the said C. D. until the said intended marriage, AND after the solemnization thereof IN TRUST for such person or persons and in such manner as the said A. B. and C. D. shall by any deed or deeds jointly appoint: AND in default of and until such appointment, and so far as any such appointment shall not extend, IN TRUST with and out of the rents and profits of the said premises to pay the rents and observe and perform the covenants by and in the said leases reserved and contained, and on the lessees' part to be paid, observed, and performed; and subject thereto, IN TRUST for the said C. D. during her life for her separate use, and after her death IN TRUST for the said A. B. if he shall survive the said C. D. during his life, AND after the death of the survivor of the said A. B. and C. D., IN TRUST for such person or persons and in such manner as the said C. D. by any deed or deeds or by her will shall appoint, and in default of and until such appointment, and so far as any such appointment shall not extend, IN TRUST for the person or persons who under the statutes for the distribution of the effects of intestates would have been entitled thereto at her death if she had died possessed thereof intestate and without having been married, such persons if more than one to take as tenants in common in the shares in which the same would have been divisible between them under the said statutes.

OF WIFE'S PROPERTY WITHOUT TRUSTS FOR CHILDREN.

Upon similar trusts.

With ultimate trust for next of kin of wife.

3. THE trustees shall stand possessed of the stocks, funds, and securities specified in the third schedule to these presents, IN TRUST for the said C. D., until the said intended marriage shall be solemnized, AND after the solemnization thereof shall either retain the same or with the consent in writing of the said A. B. and C. D. during their joint lives, and of the survivor of them during his or her life, and after the death of such survivor at the discretion of the trustees, sell, call in, and convert into money the same, and invest the moneys to arise thereby, with power, with such consent or at such discretion as aforesaid, to vary the investment thereof; AND shall stand possessed of the said stocks, funds, and securities, and the investments for the time being representing the same, IN TRUST to pay the

Declaration of trust of other personal estate upon similar trusts to the leasehold.

OF WIFE'S PROPERTY WITHOUT TRUSTS FOR CHILDREN.

income thereof to the said C. D. during her life for her separate use, &c. (*similar trusts to those of leaseholds in Article* 2).

4, 5. (*Investment and appointment of new trustees clauses, supra,* pp. 318, 320.)

IN WITNESS, &c.

THE FIRST SCHEDULE ABOVE REFERRED TO.

(*To comprise the freehold property.*)

THE SECOND SCHEDULE ABOVE REFERRED TO.

(*To comprise the leasehold property.*)

THE THIRD SCHEDULE ABOVE REFERRED TO.

(*To comprise the stocks and securities and other personal estate.*)

No. XXVII.

OF FURNITURE.

SETTLEMENT *of* FURNITURE (*c*) *belonging to the* WIFE (1) *upon such* TRUSTS *as* WIFE *shall* APPOINT; *and in* DEFAULT *of* APPOINTMENT, *for* WIFE *for* LIFE *for* SEPARATE USE, *and then for her* CHILDREN; *and if no child, for her* NEXT OF KIN: POWER OF SALE—*and* (2) *upon* TRUST *for* WIFE *for life for* SEPARATE USE, *then for* HUSBAND *for life, and then for* CHILDREN *as* WIFE *shall* APPOINT; *and in default of appointment, equally; and if* NO CHILD, *for* APPOINTEES *or* NEXT OF KIN *of* WIFE. POWER OF SALE.

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN C. D. of, &c. (*intended wife*), of the first part, A. B. of, &c. (*intended husband*), of the second part, and E. F. of, &c., and

Intended wife assigns furniture to trustees.

(*c*) A settlement of furniture is seldom desirable, particularly as, since the Married Women's Property Act, 1882, it will, in the absence of a settlement, remain the wife's separate property. The deed does not require to be registered as a bill of sale. 41 & 42 Vict. c. 31, s. 4.

OF FURNITURE.

G. H. of, &c. (*trustees*), of the third part: WITNESSETH, that in consideration of a marriage intended shortly to be solemnized between the said A. B. and the said C. D., the said C. D., as settlor (with the privity of the said A. B.), hereby assigns unto the said E. F. and G. H. (hereinafter called "the trustees"), all the furniture, chattels, and effects in and about the messuage or dwelling house, No. 1, —— Street, in the town of ——, which are mentioned and specified in the schedule hereunder written: To HOLD the same unto the trustees, IN TRUST for such person or persons and in such manner as the said C. D. shall, notwithstanding her intended coverture, by any writing under her hand or by her will appoint: AND in default of and until such appointment, and so far as any such appointment shall not extend, IN TRUST to permit the said C. D. to use and enjoy the said premises during her life for her separate use, AND after her decease, IN TRUST for her child or children who shall attain the age of twenty-one years, and if more than one, in equal shares: AND if there shall be no such child, then IN TRUST for the person or persons who under the statutes for the distribution of the effects of intestates would have been entitled thereto at her death if she had died possessed thereof intestate, and without having been married, such persons, if more than one, to take as tenants in common in the shares in which the same would have been divisible between them under the said statutes: PROVIDED ALWAYS, that the trustees may at any time, with the consent of the said C. D. during her life, and after her death at their own discretion, sell the said premises hereby assigned or any of them, and in case of any such sale, shall invest the net proceeds in some or one of the stocks, funds, or securities authorized by law as investments for trust funds, with power, with such consent or at such discretion as aforesaid, to vary the said investments into or for others of the same or a like nature: AND shall stand possessed of the said proceeds and the investments thereof upon the same or the like trusts, and with and subject to the same or the like powers and provisions as are hereinbefore declared and contained of and concerning the said premises hereby assigned or such of them as shall be then subsisting and capable of taking effect: PROVIDED ALSO that while the said premises hereby assigned or any of them shall remain in the possession of the said C. D., the trustees shall not be

In trust for appointees of wife,

and in default of and until appointment for wife for her separate use and then for her children or next of kin.

Power to trustees to sell.

Proviso for indemnity of trustees,

OF FURNITURE. obliged to see to the preservation thereof, nor be answerable for any loss or injury which may happen thereto: AND IT IS DECLARED that the statutory power of appointing new trustees shall be vested in the said C. D. during her life.

and for appointment of new trustees.

IN WITNESS, &c.

(*Or*)

Trust for wife for separate use for life, and then for husband for life, and then for children of wife, as she shall appoint, and in default of appointment equally.

IN TRUST to permit the said C. D. to use and enjoy the same during her life for her separate use, and after her decease, [IN TRUST to permit the said A. B., if he shall survive her, to use and enjoy the same during his life, and after the death of the survivor of them the said A. B. and C. D.,] IN TRUST for such child or children of the said C. D., and in such manner as the said C. D. shall by deed or will appoint, AND IN DEFAULT of such appointment, and so far as any such appointment shall not extend, IN TRUST for all the children of the said C. D. who shall attain the age of twenty-one years to be divided between them fairly and equally as they shall agree, and if they shall be unable to agree then as the trustees shall determine: AND if there shall be no child of the said C. D. who shall attain the age of twenty-one years, IN TRUST for such person or persons as the said C. D. shall by will, notwithstanding her coverture, appoint, and in default of such appointment, and so far as any such appointment shall not extend, IN TRUST for the said C. D. absolutely, if she shall survive her now intended coverture: BUT if she shall die during her coverture, IN TRUST for, &c. (*next of kin, supra*, p. 371). PROVIDED ALWAYS, that the trustees may at any time with the consent of the said C. D. during her life, and after her decease [with the consent of the said A. B. during his life, and after the decease of the survivor of the said A. B. and C. D.] at the discretion of the trustees, sell the said premises hereby assigned or any of them, and either apply the net proceeds in purchasing other furniture, chattels, or effects, or invest the same in, &c. (*as in last form*), and shall stand possessed of the proceeds and the furniture, stocks, funds, or securities which shall or may be acquired therewith, UPON the same or the like trusts, and with and subject to the same or the like powers and provisions as are hereinbefore declared and contained of and concerning the premises hereby assigned, or such of them as

If no child for appointees by will of wife, and in default of appointment for wife or her next of kin.

Power of sale.

shall be then subsisting and capable of taking effect. (*Proviso for indemnity of trustees and appointment of new trustees clause, as in last form.*) OF FURNITURE.

No. XXVIII.

SETTLEMENT *of* REAL ESTATE, *with usual* PROVISIONS; CONVEYANCE *by the intended* HUSBAND *of lands and hereditaments to the* USE *that* WIFE *may* RECEIVE *a* RENT-CHARGE *as* PIN-MONEY *during joint lives, and subject thereto to the use of* HUSBAND *for life, with* REMAINDER *to the use that* WIFE *may receive a* JOINTURE RENT-CHARGE *during her life, and then to* TRUSTEES *for one thousand years to raise* PORTIONS *for younger* CHILDREN, *with remainder to the first and other* SONS *of the marriage successively in* TAIL-MALE; POWER *to* HUSBAND *to charge the* ESTATE *with* JOINTURE *and* PORTIONS *in favour of a future* WIFE *and of* CHILDREN *by a future marriage;* POWERS ADDITIONAL *to those conferred by* SETTLED LAND ACT, 1882, *and* OTHER USUAL PROVISIONS (*d*). SETTLEMENT OF REAL ESTATE WITH USUAL PROVISIONS.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*intended husband*), of the first part, C. D. of, &c. (*intended wife*), of the second part, and E. F. of, &c., G. H. of, &c., and I. K. of, &c. (*trustees*), of the third part, WITNESSETH and DECLARES as follows:— Parties.

1. IN consideration of a marriage intended shortly to be solemnized between the said A. B. and the said C. D., the said A. B. as settlor hereby conveys unto the said E. F., G. H., and I. K. (hereinafter called "the trustees of these presents"), THE Conveyance by intended husband of parcels.

(*d*) If the settlor has a registered title under the Act of 1875, the settlement will be in the same form as if the land were not registered; and where the first tenant for life under the intended settlement is not the settlor himself, there should be a transfer to him in the prescribed form so as to make him the registered proprietor. An entry should also be made in the register under sect. 58 of the Act prohibiting any transfer or charge by the registered proprietor, unless the purchase or mortgage money is paid to the trustees. See Vol. I. p. 688. Form of settlement where land is registered.

SETTLEMENT OF REAL ESTATE WITH USUAL PROVISIONS.

manor, messuages, lands, tenements, and hereditaments, situate in the parishes of —— and ——, in the county of ——, particularly described in the schedule hereunder written: To HOLD the same unto the trustees of these presents in fee simple, To THE USE of the said A. B. in fee simple, until the said intended marriage, and from and after the said marriage, To THE USE that during the joint lives of the said A. B. and C. D. the said C. D. shall receive a yearly rent-charge of £——, to commence from the said marriage, and to be paid by equal half-yearly payments, the first thereof to be made at the end of six calendar months after the said marriage, the said rent-charge to be for her separate use without power of anticipation: AND subject to the said rent-charge, To THE USE of the said A. B. during his life, without impeachment of waste, with remainder To THE USE that the said C. D., if she survives the said A. B., shall receive during her life for her jointure a yearly rent-charge of £——, to commence from his death, and to be paid by equal half-yearly payments, the first thereof to be made at the expiration of six calendar months after his death (*e*): AND subject to the said rent-charge (*f*), To THE USE of the trustees of these presents for the term of one thousand years, to commence from the decease of the said A. B., without impeachment of waste, UPON the trusts hereinafter declared concerning the same: AND subject thereto, To THE USE of the first and other sons of the said A. B. by the said C. D. successively, according to seniority in tail-male, with remainder To THE USE of the said A. B. in fee simple.

To use that trustees may receive yearly sum and pay same to wife for separate use as pin money.

Subject thereto to use of husband for life.

After his death that wife shall take a jointure,

then to trustees for one thousand years.

Then to first and other sons of marriage in tail male.

Remainder to husband in fee.

(*e*) By the Conveyancing Act, 1881, s. 44, ample powers of distress and entry for securing rent-charges are conferred, and also a power to demise the land for a term for the same purpose, so that express powers to this effect are now unnecessary.

(*f*) Sometimes the settlor wishes to reserve to himself a power of appointment among his children. In such case the following limitation will be inserted between the jointure and the 1,000 years' term:—

"To THE USE of all or such one or more of the children of the said A. B. by the said C. D., or to the use of such person or persons in trust for all or any one or more of such children, for such estate, or estates, and in such manner as the said A. B. shall by any deed or deeds, with or without power of revocation and new appointment, at any time or times appoint, and in default of and until such appointment, and so far as any such appointment shall not extend."

SETTLEMENT OF REAL ESTATE WITH USUAL PROVISIONS.

2. From and after the decease of the said A. B., and subject to the said rent-charge of £—— hereinbefore limited to the said C. D. (*g*), the hereditaments hereby settled shall be charged (*h*)

Charge of

(*g*) If a power of appointment among the children has been reserved to the settlor as suggested in the last note, add here, "and subject also to any appointment which may be made by the said A. B. under the power in that behalf hereinbefore contained."

Observations as to the proper form of a trust for raising portions with regard to the time for ascertaining the character of younger son.

(*h*) Where a strict settlement is made by a parent, or person *in loco parentis*, and portions are provided for younger children, the general rule (subject, however, to be controlled by the express language of the settlement) is that no child taking the estate by virtue of the settlement, before the portions become *payable*, will be allowed to take any share in the sum provided for portions; and this is so whether the settlement does or does not contain an express provision to exclude him. Consequently, if an eldest son dies without issue before the time when the portions become distributable, the second son becoming an eldest son, and entitled as such to the settled estates, is excluded from a share in the portions. Chadwick *v.* Dolman, 2 Vern. 527; Lord Teynham *v.* Webb, 2 Ves. sen. 198; *Re* Bayley's Settlement, L. R. 6 Ch. 592. But if the second son is prevented from taking the settled estates by a disentailing deed executed by the eldest son before his death, such second son is not excluded, even though he may take the property under a re-settlement. Spencer *v.* Spencer, 8 Sim. 87; Macoubrey *v.* Jones, 2 K. & J. 684, disapproving of Peacocke *v.* Pares, 2 Keen, 689.

The rule by which a son being only a second son at the time his portion vests, but afterwards becoming an eldest son, is excluded, is an exception to the ordinary rule that the character of eldest son is to be ascertained at the time of vesting, and the exceptional rule is confined to cases where the provision is made by a parent, or a person *in loco parentis*. Hall *v.* Hewer, Amb. 203; Adams *v.* Adams, 25 Beav. 652; Sandeman *v.* Mackenzie, 1 J. & H. 613.

Nor does the rule above referred to apply where the provisions of the settlement clearly show that the shares are to vest in the children at twenty-one, and are to remain so whatever may occur afterwards. Windham *v.* Graham, 1 Russ. 331.

Previously to the late case of Ellison *v.* Thomas, 1 De G. J. & S. 18, it was generally considered that under the form of a trust for raising portions then in common use, an eldest son was always excluded, even though he died before coming into possession of the settled estate. See Gray *v.* Limerick, 2 De G. & Sm. 370. It seems, however, to be now settled, that if an eldest son dies before his estate tail falls into possession without inheritable issue, and without having disentailed, his representatives will, under the form above referred to, take a portion. Ellison *v.* Thomas, *ubi supra;* Davies *v.* Hugenin, 1 H. & M. 730; Sing *v.* Leslie, 3 H. & M. 68. But it is conceived (though it has not been expressly decided) that this would not be the case if the eldest son so dying leaves a son who ultimately succeeds to the settled estate, nor if he concurs with his father in a disentailing assurance. See Collingwood *v.* Stanhope, L. R. 4 H. L. 43, where, however, the eldest son survived his father, and would, but for his own disentailing deed, have become entitled in possession under the original settlement.

The present state of the authorities makes it important that a settlement should express clearly whether the character of younger son is to be ascer-

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with the sum of £15,000 (reducible as hereinafter provided) for the portions of the children of the said intended marriage who being younger sons shall attain the age of twenty-one years, or being daughters shall attain that age or marry under that age, and for this purpose the expression "younger sons" shall be construed to mean and include every son not being at his birth or becoming during his minority an eldest or only son entitled for the time being under these presents to the hereditaments hereby settled for an estate in tail-male in possession or in remainder immediately expectant on the decease of the said A. B.: AND the sum of money charged as aforesaid shall be divided between or among the said children in such shares and manner as the said A. B. shall by any deed or deeds or by his will appoint, and in default of such appointment, and so far as any such appointment shall not extend, shall be divided between or among the said children in equal shares, the portion of each child who attains a vested interest therein after the death of the said A. B. to be payable to him or her upon the vesting thereof, and the portion of each child who attains a vested interest therein in the lifetime of the said A. B. to be payable to him or her upon the decease of the said A. B.: PROVIDED ALWAYS, that no child taking a share under any appointment shall have any share in the unappointed part (if any) of the said money without bringing his or her appointed share into hotchpot, and accounting for the same accordingly: PROVIDED ALSO, that if only one child being a younger son shall attain the age of twenty-one years, or being a daughter shall attain that age or marry under that age, such child shall have the sum of £5,000 and no more for his or her portion;

money for portions of daughters and younger sons.

Definition of expression "younger sons."

Sum charged to be divisible among children as husband shall appoint;

and in default of appointment equally, with hotchpot clause.

Reduction of charge to £5,000, £8,000 or £12,000 if only one, two, or three younger children.

tained at the time of vesting or at the time of payment. It is submitted that on the whole the time of vesting is the more convenient, so that a son being an eldest son at twenty-one is excluded in every case, and a son being a younger son at twenty-one does not lose his portion by afterwards becoming the eldest. A second son attaining twenty-one is thus in a position, in case he marries, to make a certain provision for his wife and children, which he could not do if his portion was liable to be defeated by the subsequent death of his elder brother. And if it is urged, as a possible hardship, that the wife and daughters of an eldest son who dies before his father may find themselves unprovided for, the reply is that an eldest son can always, with the concurrence of the father, bar the entail and re-settle the estate, and thus make a proper provision for his family, and it may, as a general rule, be presumed that the father will not refuse his concurrence in a re-settlement without some good reason.

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and if two children and no more being younger sons shall attain the age of twenty-one years, or being daughters shall attain that age or marry under that age, such two children shall have the sum of £8,000 and no more between them for their portions; and if three children and no more being younger sons shall attain the age of twenty-one years, or being daughters shall attain that age or marry under that age, such three children shall have the sum of £12,000 and no more between them for their portions; and the excess of the said sum of £15,000 over and above the said sum of £5,000, £8,000, or £12,000 (as the case may be), except such part (if any) of the money constituting the excess as under the power of advancement hereinafter contained shall have been raised for any son who shall die or cease to be a younger son while under the age of twenty-one years, shall sink into the said hereditaments and cease to be charged thereon (*i*).

Trusts of term to raise portions;

3. THE said hereditaments are hereinbefore limited to the trustees of these presents for the said term of one thousand years, UPON TRUST that the said trustees shall by mortgage of the hereditaments comprised in the said term or any of them for the whole or any part of the said term, or by or out of the rents and profits thereof, or by any other reasonable ways or

Plan adopted for making the amount vary according to the number of children.

(*i*) Some care is requisite in framing a charge of portions, where, as is generally the case, it is wished to make the amount ultimately raiseable depend on the number who obtain vested interests. The plan formerly in general use was to make the amount charged depend in the first instance on the number of children born, the portion of each child to be a vested interest at twenty-one, or in the case of a daughter at marriage, and a survivorship or accruer-clause was added to the effect that, if any child died before attaining a vested interest, his or her portion (original and accruing) should go to the others, except so far as any part might have been raised for his advancement, and with a proviso intended to prevent any child from having his or her portion increased by survivorship beyond the limit prescribed. This form was well understood, and answered its purpose, but was somewhat cumbersome. In the later editions of Davidson's Precedents (vol. iii.) the plan is adopted of making the amount raiseable depend on the number of children who attain twenty-one, or being daughters marry, with a proviso attached to the advancement clause for the purpose of preventing the whole machinery from being thrown out of gear by reason of a son dying during minority after having received part of his presumptive portion by way of advancement. In the above Precedent the authors have adopted the plan, which appears to them equally effective and convenient, of charging the property in the first place with the *maximum*, subject to a proviso reducing the amount within the limits intended in the event of the number of children not being sufficient to require the *maximum*.

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means, raise the sum or sums of money to which any child or children shall become entitled for his, her, or their portion or portions under the foregoing charge, as and when the same respectively shall become payable, together with the costs and expenses incurred in or about the execution of this trust: AND UPON FURTHER TRUST that so long as any portion which shall have become payable under the foregoing charge shall remain unpaid, the said trustees shall, out of the rents and profits of the said hereditaments, or by any other reasonable ways or means, raise and pay to the person entitled to such unpaid portion interest thereon after the rate of £4 per cent. per annum by half-yearly payments, and so that if such person shall be a married woman under the age of twenty-one years, her receipt shall be a sufficient discharge for such interest, notwithstanding her infancy: AND UPON FURTHER TRUST that if at the decease of the said A. B. any child entitled in expectancy to a portion under the foregoing charge shall be under the age of twenty-one years, and being a daughter shall be unmarried, the said trustees shall, with and out of the rents and profits of the said hereditaments or by any other reasonable ways and means, raise such annual sum for the maintenance and education of each such minor as the said trustees shall think fit, not exceeding what the interest of the expectant portion of such minor would amount to after the rate of £4 per cent. per annum, and shall apply the annual sum to be so raised for the maintenance and education of such minor accordingly, with liberty for the said trustees to pay the same to the guardian or any of the guardians of such minor for the purpose aforesaid, without being liable to see to the application thereof: AND UPON FURTHER TRUST that, subject to the foregoing trusts and to the power of advancement next hereinafter contained, the said trustees shall permit the rents and profits of the hereditaments to be received by the person or persons for the time being entitled thereto in remainder immediately expectant on the said term.

and to raise interest on unpaid portions;

and to raise annual sums for maintenance of infant younger children;

and subject as above to permit rents to be received by person entitled in remainder.

Power to raise moiety of presumptive shares of sons for advancement.

4. IT shall be lawful for the trustees of these presents, upon the request in writing of the said A. B. during his life, and after his death at their own discretion, by all or any of the ways and means aforesaid to raise any part or parts not exceeding together one moiety of the presumptive portion of any son being a minor in the sum of money hereby charged

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for portions as aforesaid, and to apply the same for the advancement, preferment, or benefit of such son in such manner as the said A. B. shall request, or as the said trustees shall after the death of the said A. B. think fit, and the money so raised shall be reckoned as part of the share of such son if he shall attain the age of twenty-one years.

Power to husband to jointure a future wife.

5. If the said A. B. shall marry again it shall be lawful for him at any time or times, either before or after each or any such future marriage (but subject to the said term of one thousand years hereinbefore limited and the trusts thereof), by any deed or deeds, or by his will, to appoint to each or any such future wife in case she shall survive him, during her life, for her jointure, any yearly rent-charge not exceeding the yearly sum of £——, to be charged upon and issuing out of the hereditaments hereby settled, or any part thereof, and to be paid at such times and in such manner as the said A. B. shall think fit: And also, by any deed or deeds, or by his will, to charge the said hereditaments, or any part thereof, with any sum of money for the portion or portions of his child or children by such future wife or wives as aforesaid, not exceeding for one child the sum of £5,000, for two children the sum of £8,000, for three children the sum of £12,000, and for four or more children the sum of £15,000, to go to or be divided between or among such child or children, in such shares and manner as the said A. B. shall think fit, but so that (subject to any such power of advancement as is hereinafter mentioned) no portion shall be made to vest absolutely in any child being a son unless he shall attain the age of twenty-one years, or being a daughter she shall attain that age or marry under that age: And also, by the same or any other deed, or by his will, to limit and appoint the said hereditaments, or any part thereof, to trustees for any term of years with or without impeachment of waste (such term to take effect in order of limitation immediately after the term of one thousand years hereby created): Upon such trusts as he the said A. B. shall think fit, for raising the money to be charged for a portion or portions as aforesaid, together with the costs and expenses of and incidental to the execution of such trusts: And the said A. B. may in and by such appointment direct or authorize the trustees of the term to be thereby created, during the minority of any child entitled in expectancy to a portion under such charge as

And to charge with portions for children of a future marriage.

To limit term to trustees to raise portions.

Power to husband to authorize trustees to raise annual sum for maintenance of minors.

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aforesaid, to raise out of the rents and profits of the said hereditaments or otherwise such annual sum as the said A. B. shall direct, or as the said trustees shall think fit, not exceeding interest on the expectant portion of such minor after the rate of £4 per cent. per annum, and to apply the same for his or her maintenance and education, with liberty for the said trustees to pay the same to the guardian or any of the guardians of such minor for the purpose aforesaid, without being liable to see to the application thereof: AND the said A. B. may also, if he thinks fit, authorize the said trustees to raise by mortgage or otherwise any part or parts not exceeding together one moiety of the presumptive portion of any son, and to apply the same for his advancement or benefit: PROVIDED ALWAYS, that if any money shall become raiseable for the younger child or children of the now intended marriage under the foregoing charge in that behalf, the amount raiseable for the child or children of the said A. B. by any future wife or wives under any charge to be made pursuant to this present article shall not exceed such a sum as with the amount raiseable for the child or children of the now intended marriage as aforesaid shall make up the sum of £25,000: AND any charge made under this present article which would give to the child or children of the said A. B. by any such future wife or wives a greater amount than as last aforesaid shall fail of effect as to the excess.

And to raise one-half of presumptive portions of sons for advancement.

Trustees to take possession during any infancy.

6. THE trustees of these presents shall be the trustees hereof for the purposes of the Settled Land Acts, 1882 to 1890 (*k*), and also for the purposes mentioned in sect. 42 of the Conveyancing and Law of Property Act, 1881 (*l*), and if any person, during

Power should not be given to a single trustee to act.

(*k*) The surviving or continuing trustees, so long as there are two, will be able to exercise all the powers and duties of the Act. It is not desirable to insert any express provision, as authorized by sect. 39, enabling a single trustee to receive capital trust money. Whenever the trustees are reduced to one, there will be no difficulty in appointing another or others under the Conveyancing Act, 1881, s. 31.

(*l*) This section is as follows:—

Management of land and receipt and application of income during minority.

(1.) If and as long as any person who would but for this section be beneficially entitled to the possession of any land is an infant, and being a woman is also unmarried, the trustees appointed for this purpose by the settlement, if any, or if there are none so appointed, then the persons, if any, who are for the time being under the settlement trustees with power of sale of the settled land, or of part thereof, or with power of consent to or approval of the exercise of such a power of sale, or if there are none, then any persons appointed as trustees for this purpose by the Court, on the application of a guardian or next friend of the infant, may

whose infancy the said trustees shall be in possession of the hereditaments hereby settled under that section shall die while

SETTLEMENT OF REAL ESTATE WITH USUAL PROVISIONS.

enter into and continue in possession of the land; and in every such case the subsequent provisions of this section shall apply.

(2.) The trustees shall manage or superintend the management of the land, with full power to fell timber or cut underwood from time to time in the usual course for sale, or for repairs or otherwise, and to erect, pull down, rebuild, and repair houses, and other buildings and erections, and to continue the working of mines, minerals, and quarries which have usually been worked, and to drain or otherwise improve the land or any part thereof, and to insure against loss by fire, and to make allowances to and arrangements with tenants and others, and to determine tenancies, and to accept surrenders of leases and tenancies, and generally to deal with the land in a proper and due course of management; but so that, where the infant is impeachable for waste, the trustees shall not commit waste, and shall cut timber on the same terms only, and subject to the same restrictions, on and subject to which the infant could, if of full age, cut the same.

(3.) The trustees may from time to time, out of the income of the land, including the produce of the sale of timber and underwood, pay the expenses incurred in the management, or in the exercise of any power conferred by this section, or otherwise in relation to the land, and all outgoings not payable by any tenant or other person, and shall keep down any annual sum, and the interest of any principal sum, charged on the land.

(4.) The trustees may apply at discretion any income which, in the exercise of such discretion, they deem proper, according to the infant's age, for his or her maintenance, education, or benefit, or pay thereout any money to the infant's parent or guardian, to be applied for the same purposes.

(5.) The trustees shall lay out the residue of the income of the land in investment on securities on which they are by the settlement, if any, or by law, authorized to invest trust money, with power to vary investments; and shall accumulate the income of the investments so made in the way of compound interest, by from time to time similarly investing such income and the resulting income of investments; and shall stand possessed of the accumulated fund arising from income of the land and from investments of income on the trusts following (namely):

(i.) If the infant attains the age of twenty-one years, then in trust for the infant:

(ii.) If the infant is a woman and marries while an infant, then in trust for her separate use, independently of her husband, and so that her receipt, after she marries, and though still an infant, shall be a good discharge; but

(iii.) If the infant dies while an infant, and being a woman without having been married, then, where the infant was, under a settlement, tenant for life, or by purchase, tenant in tail, or tail male or tail female, on the trusts, if any, declared of the accumulated fund by that settlement; but where no such trusts are declared, or the infant has taken the land from which the accumulated fund is derived by descent, and not by purchase, or the infant is tenant for an estate in fee simple, absolute or determinable, then in trust for the infant's personal representatives, as part of the infant's personal estate;

but the accumulations, or any part thereof, may at any time be applied as if the same were income arising in the then current year.

(6.) Where the infant's estate or interest is in an undivided share of

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an infant, being tenant in tail by purchase, the accumulated fund arising as in the said section mentioned shall be held by the said trustees upon the trusts which would be applicable thereto if the same were capital money arising from a sale of part of the hereditaments hereby settled under the Settled Land Acts.

Additional powers:

[7. THE said A. B. or other the person or persons having for the time being the powers of a tenant for life under the Settled Land Acts, and the trustees of these presents for and on behalf of any such person who shall be an infant, shall have the following powers in addition to those conferred by the Acts, namely:—

(*Insert such of the following powers as may be applicable.*)

to grant building leases for 999 years;

1st. To lease (*m*) any part of the hereditaments hereby settled or any easement, right, or privilege over or in relation to the same for building purposes (as defined in the Settled Land Act, 1882) for any term not exceeding 999 years in like manner as if 999 years had been mentioned in sect. 6 of the said Act as the maximum length of term for a building lease instead of 99 years;

to convey for building purposes reserving fee farm rents.

2ndly. To convey (*m*) any part of the hereditaments hereby settled, or any easement, right, or privilege over or in relation to the same, to any person or persons for building purposes (as defined in the said Act) in fee simple or for any less estate in consideration of a yearly rent-charge to be reserved and made payable out of the hereditaments to be so conveyed, and to be also secured by covenant or otherwise as the person or persons exercising this power shall think fit;

To give sites for churches, &c.

3rdly. To convey part of the hereditaments hereby settled

land, the powers of this section relative to the land may be exercised jointly with persons entitled to possession of, or having power to act in relation to, the other undivided share or shares.

(7.) This section applies only if and as far as a contrary intention is not expressed in the instrument under which the interest of the infant arises, and shall have effect subject to the terms of that instrument and to the provisions therein contained.

(8.) This section applies only where that instrument comes into operation after the commencement of this Act.

(*m*) In some parts of the country it is customary to make building leases for very long terms, or, instead of granting building leases, to make grants in fee simple at fee farm rents; where this custom prevails, the form given above will be found useful. If it is omitted, the sanction of the Court would have to be obtained under sect. 10 of the Settled Land Act, 1882.

(not exceeding in any one parish —— acres) by way of gift or by way of sale for a price less than the full value thereof, to any person or persons or body corporate in fee simple as and for the site of a church, school, hospital, or almshouse, or as and for a yard, garden, or ground to be annexed thereto, or for a burying ground, or for any other religious or charitable purpose;

SETTLEMENT OF REAL ESTATE WITH USUAL PROVISIONS.

4thly. To raise any money for improvements authorized by the said Acts (*n*), by a mortgage of the hereditaments hereby settled or any part thereof, and so that any money so raised shall be received by the trustees of these presents for the purpose aforesaid, and all the provisions of the said Acts shall take effect with respect to the money to be raised as aforesaid, and any mortgage to be made for that purpose, as if the words "or for improvements authorized by this Act" had been inserted in sect. 18 of the Act of 1882 after the word "partition."]

Power to raise money by mortgage for improvements.

[8. SECTS. 26 and 28 of the Settled Land Act, 1882 (*o*), shall, with reference to these presents and the hereditaments hereby settled, be varied as follows:—(1.) The trustees may apply capital money arising under the said Acts or any money raised for improvements under the last preceding Article in or towards payment of the whole or any part of the work or operation comprised in the improvement, upon the certificate of a competent engineer or able practical surveyor nominated by the trustees of these presents without its being necessary that he shall be also approved by the Board of Agriculture or by the Court: AND (2) sect. 28 shall be read and take effect as if the words "or the trustees of these presents" had been inserted therein throughout after the word "Commissioners."]

Variations of sections 26 and 28 of Settled Land Act, so as to dispense with interference of Land Commissioners.

9. IT shall not be necessary for the said A. B. when intending to make a sale, exchange, partition, lease, mortgage, or charge under the powers contained in the said Acts, to give any notice of his intention in that behalf to the trustees of these presents or any of them, or to their solicitor.

Sales, &c. may be made by tenant for life under statutory power without giving notice to the trustees.

(*n*) The Settled Land Act, 1882, authorizes any capital money in the hands of the trustees or in Court to be expended in improvements, but does not enable money to be raised for that purpose. The power in the text will in some cases be found useful.

(*o*) In order to avoid expense and delay, it will sometimes be desired to dispense with the necessity for having resort to the Land Commissioners in regard to improvements. This clause is intended for this purpose.

SETTLEMENT OF REAL ESTATE WITH USUAL PROVISIONS.

On mining leases no part of rent to be capital.

10. UNDER a mining lease no part of the rent shall be set aside as capital as required by sect. 11 of the Settled Land Act, 1882, but the whole thereof shall go as rents and profits, as if that section had been omitted from the said Act (*p*).

Mansion house may be sold or leased, without consent of trustees.

11. [THE principal mansion house on the land hereby settled, and the pleasure grounds and park and lands usually occupied therewith, may be sold or leased by the said A. B. without the consent of the trustees of these presents or an order of the Court (*q*).]

Investment clause.

12. [CAPITAL money (*r*) arising from the hereditaments hereby settled under the Settled Land Acts, and money liable under these presents to be applied as if it had been capital money arising as aforesaid, may be invested not only in the modes of investment authorized by law for trust funds, but also in the purchase of inscribed stock of any British colony or on, &c. (*insert any other investments which may be desired and which are not authorized by the Acts*).]

Mortgagee not to be bound to inquire as to regularity of mortgage.

13. UPON any mortgage by the trustees of these presents, or by the trustees of any term created under or to be made in exercise of any of the trusts or powers herein contained, the person or persons advancing money thereon shall not be bound or concerned to see or inquire whether such money is actually required for the purposes of such trusts or powers, or otherwise as to the propriety of the mortgage.

Power of appointing new trustees.

14. THE power of appointing new trustees conferred by the Conveyancing and Law of Property Act, 1881, shall for the purposes of these presents be vested in the said A. B. during his life (*s*).

Settlement to be void if marriage not solemnized within twelve months.

15. PROVIDED ALWAYS, that if the said intended marriage shall not be solemnized within twelve calendar months from the date of these presents, then and in such case these presents, and the uses, trusts, powers, and provisions hereinbefore declared

(*p*) The above provision as to mining rents can be omitted if it is wished to leave sect. 11 in force, or if the settlement does not comprise mineral property.

(*q*) This clause will be inserted or not, according to the wish of the parties.

(*r*) Where it is wished to give a more extensive power of investment than that contained in the Act, the above clause may be inserted.

(*s*) A trustee appointed under this power will be a trustee for the purposes of the Settled Land Acts, 53 & 54 Vict. c. 69, s. 17.

and contained, shall be void and of no effect, and the hereditaments hereby settled shall revert and go to the use of the said A. B., in fee simple.

SETTLEMENT OF REAL ESTATE WITH USUAL PROVISIONS.

In witness, &c.

No. XXIX.

SETTLEMENT *of* Real Estate *where the Settlor is seised in fee simple subject to an* Annuity *payable under a former settlement to his mother, who does not join* (*t*).

SETTLEMENT OF REAL ESTATE SUBJECT TO ANNUITY.

THIS INDENTURE, &c. (*date and parties as in last precedent*): Parties.

Whereas the said A. B. is seised in fee simple of the hereditaments intended to be hereby conveyed, subject to a yearly rent-charge of £—— payable to X. B., his mother, for her life, under an indenture dated, &c., and made, &c. (*date and parties*): Recital of seisin in fee subject to annuity.

And whereas a marriage is intended shortly to be solemnized between the said A. B. and the said C. D.; And upon the treaty for the said marriage it was agreed that the said hereditaments should be settled in the manner hereinafter expressed: NOW THIS INDENTURE WITNESSETH and declares as follows:— Of intended marriage. Witnessing part.

1. In consideration of the said intended marriage, the said Settlor conveys

(*t*) In a case like this, the settlement is necessarily made subject to the annuity, and any sale by the tenant for life under the Settled Land Act will also be subject to it. If the annuitant should refuse to concur in the sale, the purchaser will probably be willing to complete upon being satisfied that the annuity will be payable out of the income of the purchase-money. To prevent any doubt on this point, it seems desirable to limit by the settlement a term of years to the trustees, upon an express trust to pay the annuity. This trust will be transferred to the purchase-money by sect. 22, sub-s. 6, of the Settled Land Act, 1882.

SETTLEMENT OF REAL ESTATE SUBJECT TO ANNUITY.

A. B. as settlor hereby conveys unto the said E. F., G. H., and I. K. (hereinafter called "the trustees of these presents"), ALL, &c. (*parcels*), TO HOLD the same unto the trustees in fee simple, To the use of the said A. B. in fee simple until the said intended marriage, and after the marriage, To the use of the trustees for the term of ninety-nine years computed therefrom, without impeachment of waste, IN TRUST, out of the rents and profits of the said hereditaments, to pay to the said X. B. during her life, the yearly sum of £—— by equal half-yearly payments on the —— day of —— and the —— day of —— in every year, in satisfaction of the yearly rent-charge of that amount limited to her by the said indenture of the —— day of ——, 18—, and to permit the residue of the said rents and profits to be received by the person or persons for the time being entitled to the said hereditaments and premises in remainder immediately expectant on the said term, and from and after the determination of the said term, and in the meantime subject thereto and to the trusts thereof, To the use, &c. (*rest of the precedent the same as No. XXVIII.*).

to use of trustees for term in trust to pay said annuity.

IN WITNESS, &c.

No. XXX.

RE-SETTLEMENT *of* REAL ESTATE *by a* FATHER *and* ELDEST SON. LIMITATIONS *to such* USES *as* FATHER *and* SON *shall* JOINTLY *appoint, and subject thereto to* USES *to secure a* RENT-CHARGE *to* SON *during joint lives of himself and father, Subject thereto to* FATHER *for* LIFE, *remainder to* SON *for life, remainder to* FIRST AND OTHER SONS *of* SON *successively in* TAIL-MALE; *remainder to* SUCH USES *as* FATHER *and his* SECOND SON *shall jointly* APPOINT, *and subject thereto to* FIRST AND OTHER SONS *of* SECOND SON *successively in* TAIL-MALE, *with similar* LIMITATIONS *in favour of other* SONS *of* FATHER *and their* ISSUE MALE, *with remainder to* AFTER-BORN *sons of* FATHER *successively in tail-male, with ultimate remainder to son in fee simple.* POWER *to* FATHER *to charge with* GROSS SUM *for his own benefit—similar* POWER *to* ELDEST SON *when in possession.* POWERS *to* ELDEST SON AND THE SUBSEQUENT TENANTS *for* LIFE, *to* JOINTURE *and charge with* PORTIONS. ADDITIONAL POWERS. PROVISO *keeping on foot* POWERS *of* LEASING, *&c., in* FORMER SETTLEMENT (*u*).

RE-SETTLEMENT BY FATHER AND ELDEST SON.

THIS INDENTURE, made the —— day of ——, BETWEEN W. B. of, &c. (*father*), of the first part, A. B. of, &c. (*eldest son*), of the second part, and E. F. of, &c., G. H. of, &c., and I. K. of, &c. (*trustees*), of the third part: WHEREAS by an indenture, &c. (*date and parties*), divers freehold hereditaments therein described were settled and assured (after certain uses which have since determined or failed to take effect) to the use of the said W. B. during his life without impeachment of waste, with remainder to the use that X. B. his then intended wife, if she should survive the said W. B., should during her life receive

Parties.

Recital of existing settlement.

(*u*) It is usual on an eldest son coming of age to re-settle the family estate. If the re-settlement is postponed until the son's marriage, it will generally be found convenient to frame the re-settlement without any express reference to the intended marriage, and to have a separate deed of settlement on the marriage in exercise of powers of jointuring and charging with portions inserted in the re-settlement.

RE-SETTLEMENT BY FATHER AND ELDEST SON.

a yearly rent-charge of £500 for her jointure, and subject thereto to the use of (*trustees*), for the term of 500 years, upon trusts for [better securing the said rent-charge and also for] raising (in the event which happened) the sum of £10,000 for the portions of the younger children of the said W. B. by the said X. B. his wife, and subject thereto to the use of the first and other sons of the said W. B. successively according to seniority in tail-male with divers remainders over: AND in the said indenture are contained powers enabling the said W. B. to jointure a future wife and to charge the settled hereditaments with portions for his children by a future wife: AND in the said indenture are also contained the usual powers of leasing and of sale and exchange, and a direction that the moneys to arise from any sale, or to be received for equality of exchange, shall be laid out in the purchase of other hereditaments to be settled to the like uses, and shall in the meantime be invested in or upon such stocks, funds, or securities as therein mentioned: AND by the said indenture divers copyhold hereditaments held of the manor of —— in the county of —— therein described were covenanted to be surrendered to the use of —— (*the trustees of the settlement*) and their heirs upon trusts corresponding with the uses hereinbefore declared of the said freehold hereditaments: AND WHEREAS the said copyhold hereditaments were on the —— day of —— duly surrendered to the use of the said (*trustees*) and their heirs pursuant to the covenant in that behalf contained in the said indenture, and the said (*trustees*) were thereupon admitted tenants to the said hereditaments: AND WHEREAS some of the freehold and copyhold hereditaments comprised in the said indenture of settlement have been from time to time disposed of by way of sale or exchange under the powers in that behalf contained in the said indenture, and part of the proceeds of such sales have been laid out in the purchase of other freehold and copyhold hereditaments, which freehold hereditaments have been conveyed to the uses of the said indenture of settlement, and which copyhold hereditaments have been surrendered to the use of the said —— (*trustees*) upon the trusts of the said indenture, and who have been admitted thereto accordingly, and the residue of such proceeds is now represented by the sum of £—— $2\frac{3}{4}$ per Cent. Consolidated Stock standing in the names of the said —— and a sum of £—— secured on mortgage of

Sales and exchanges under power in existing settlement.

RE-SETTLEMENT BY FATHER AND ELDEST SON.

real estate situate at ——, which mortgage was effected by an indenture, &c. (*date and parties*): And whereas the particulars of the hereditaments now subject or believed to be subject to the uses of the said indenture of settlement are set forth in the first schedule hereunder written: And whereas the said A. B. is the first son of the said W. B. by the said X. B. his wife, and he attained the age of twenty-one years on the —— day of —— last: And whereas by an indenture bearing even date with these presents, and made between the said W. B., of the first part, the said A. B., of the second part, and X. Y., of the third part (and which indenture is intended to be duly enrolled as a disentailing assurance), the said W. B. and A. B. have conveyed all the freehold hereditaments comprised in and settled by the said indenture of settlement, except such of them as have been disposed of by way of sale or exchange as aforesaid: And also (by way of conveyance and not of exception) all the freehold hereditaments which were purchased or received in exchange and have been conveyed to the uses of the said indenture of settlement as aforesaid: And all other (if any) the freehold hereditaments now subject, either at law or in equity, to the uses of the said indenture of settlement unto the said X. Y. in fee simple (subject to the said yearly rent-charge of £500 limited to the said —— (*wife*) by the said indenture of settlement, and also to the said term of 500 years and the trusts thereof, but freed and discharged from the estate tail of the said A. B., and all remainders estates and powers to take effect after the determination or in defeasance thereof): To such uses, upon such trusts, and with and subject to such powers and provisions, as the said W. B. and A. B. shall by any deed or deeds jointly appoint: And by the same indenture the said sum of £—— $2\frac{3}{4}$ per Cent. Consolidated Stock, and the sum of £—— secured by mortgage as aforesaid, and all other moneys, stocks, funds, and securities (if any), liable to be laid out in the purchase of hereditaments to be settled as aforesaid have been assigned by the said W. B. and A. B. (freed and discharged as aforesaid) unto the said X. Y. upon such trusts, and subject to such powers and provisions, as the said W. B. and A. B. shall by any deed or deeds jointly appoint: And whereas by another indenture bearing even date with these presents, and made between, &c. (*parties*), (and which indenture is entered on the court rolls of the Manor

That A. B. is eldest son.

Disentailing deed of freeholds and money.

Disentailing deed of copyholds.

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of ——) the said W. B. and A. B. have conveyed all the copyhold hereditaments held of the said Manor of or to which the said A. B. is equitable tenant in tail unto the said X. Y. in customary fee simple, upon such trusts and with and subject to such powers and provisions as the said W. B. and A. B. shall by any deed or deeds jointly appoint: AND WHEREAS the said W. B. is seised in fee simple of the hereditaments comprised in the second schedule hereunder written: AND WHEREAS it has been agreed between the said W. B. and A. B. as a family arrangement that such settlement shall be made as is hereinafter expressed: NOW THIS INDENTURE WITNESSETH AND DECLARES as follows:

Agreement for settlement.

Appointment by a father and intended husband of hereditaments in first schedule.

1. THE said W. B. and A. B., as settlors, in exercise of the power for this purpose given to them by the first hereinbefore recited indenture bearing even date herewith, and of all other powers (if any) them hereunto enabling, hereby appoint that ALL the freehold hereditaments described in the first schedule to these presents, and all other (if any) the freehold hereditaments comprised in the first hereinbefore recited indenture bearing even date with these presents shall (subject to the said yearly rent-charge of £500 by the said indenture of settlement limited to the said —— as aforesaid and to the said term of 500 years created by the same indenture and the trusts thereof) GO, REMAIN, AND BE to the uses and with and subject to the powers and provisions hereinafter expressed and contained of and concerning the same.

(Subject to charges under existing settlement.)

Conveyance by father of hereditaments in second schedule.

2. THE said W. B., as settlor, hereby conveys unto the said E. F., G. H., and I. K. (hereinafter called "the trustees of these presents"), THE hereditaments described in the second schedule hereunder written: TO HOLD the same unto the trustees of these presents in fee simple, To the uses and with and subject to the powers and provisions hereinafter declared and contained of and concerning the same.

To such uses as father and son shall jointly appoint, and subject thereto, that son may take rent-charge.

3. THE appointment and conveyance hereinbefore respectively made shall enure and be as regards all the said hereditaments (hereinafter called "the hereditaments hereby settled"): To such uses as the said W. B. and A. B. shall by any deed or deeds jointly appoint, AND in default of such appointment and so far as any such appointment shall not extend, TO THE USE that the said A. B. shall during the joint lives of himself and the said W. B.

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receive a yearly rent-charge of £—— to commence from the date of these presents, and to be paid by equal half-yearly payments, the first payment thereof to be made on the —— day of —— next; AND subject thereto TO THE USE of the said W. B. during his life without impeachment of waste in restoration of his former life estate under the said indenture of settlement, and so that the powers of jointuring a future wife and of charging with portions for his children by a future wife given to him by the said indenture of settlement shall be also restored and remain in full force: with remainder, TO THE USE of the said A. B. for his life without impeachment of waste, with remainder, TO THE USE of the first and other sons of the said A. B. successively according to seniority in tail-male, with remainder, TO SUCH USES as the said W. B. and C. B. (the second son of the said W. B.) shall by any deed or deeds jointly appoint, and in default of and until such appointment, and so far as any such appointment shall not extend, TO THE USE of the said C. B. during his life without impeachment of waste, with remainder, TO THE USE of the first and other sons of the said C. B. successively according to seniority in tail-male, with remainder, To such uses as the said W. B. and D. B. (the third son of the said W. B.) shall by any deed or deeds jointly appoint, (*with remainders to D. B. for life and his sons successively in tail-male, with similar remainders to each son already born of W. B. and to his first and other sons successively in tail-male*): with remainder, TO THE USE of each and every son of the said W. B. hereafter to be born successively according to seniority in tail-mail, with remainder, TO THE USE of the said A. B., in fee simple.

Remainder to father for life.

Remainder to eldest son for life, remainder to his first and other sons in tail-male, remainder to such uses as father and second son shall jointly appoint, and subject thereto, to second son for life, remainder to his first and other sons in tail-male, remainder as father and third son shall jointly appoint, &c.

With ultimate remainder to eldest son in fee simple.

4. IT shall be lawful for the said W. B. at any time or times hereafter by any deed or deeds or by his will to charge the hereditaments hereby settled or any part thereof with the payment to himself or to any other person or persons of any sum of money not exceeding ——, and to appoint the said hereditaments to any person or persons for any term or terms of years, either by way of mortgage for securing payment of the sum of money to be so charged with interest thereon at any rate not exceeding £4 per cent. per annum, or upon trusts for raising the same by mortgage or otherwise.

Power to father to charge with gross sum for himself.

5. IT shall be lawful for the said A. B. if he shall survive the said W. B. at any time or times thereafter by any deed, &c.

Power for eldest son after coming into

RE-SETTLEMENT BY FATHER AND ELDEST SON.

(*power to charge the settled hereditaments with a gross sum of money as in last Article*).

possession to charge with gross sum for himself.

Power to eldest son to jointure and charge with portions.

6. It shall be lawful for the said A. B. if he shall marry, and either before or after each or any such marriage by any deed or deeds, or by his will, to appoint to his wife in case she shall survive him during her life, for her jointure, a yearly rent-charge issuing out of the hereditaments hereby settled or any part thereof not exceeding if and while the said W. B. shall be living, the yearly sum of £——, and after the death of the said W. B. the yearly sum of £——, and to be paid at such times and in such manner as the said A. B. shall direct: And also by any deed or deeds, or by his will, to charge the said hereditaments or any part thereof with a sum of money for the portions of his children being daughters or younger sons not exceeding for one child £——, for two children £——, for three children £——, and for four or more children £——, to vest in and be paid to such child or children at such age or time, ages or times, not being earlier as to any son than his age of twenty-one years (except by way of advancement under any power to be conferred in that behalf as hereinafter is mentioned), nor as to any daughter than her age of twenty-one years or day of marriage, in such shares if more than one and in such manner as the said A. B. shall direct or appoint, but so that no portion shall be raised or become payable during the life of the said W. B. without his consent in writing.

Power to other sons to jointure,

7. It shall be lawful for every son of the said W. B. (other than the said A. B.) either before or after he shall become entitled under these presents to the possession or receipt of the rents and profits of the hereditaments hereby settled, and either before or after his marriage, by any deed or deeds, or by his will, (but subject and without prejudice to the uses and estates (if any) preceding the use or estate hereby limited to the person making such appointment and to the powers annexed to such preceding uses and estates, and also subject and without prejudice to the uses or estates (if any) which shall or may be limited in exercise of the same powers or any of them) to appoint to any wife of the person for the time being exercising this power for her life, any yearly rent-charge not exceeding the yearly sum of £—— for her jointure, to be issuing out of the said hereditaments or any part thereof, and to be paid at such times and in

such manner as the person for the time being exercising this power shall think fit: And also by any deed or deeds, or by his will (but subject and without prejudice as aforesaid) to charge the said hereditaments or any part thereof with any sum of money for the portions of his children being daughters or younger sons, not exceeding for one child £——, for two children between them £——, for three children between them £——, or for four or more children between them £——, to vest in and be paid to such child or children at such age or time, ages or times, not being earlier as to any son than his age of twenty-one years, except by way of advancement under any power to be conferred for that purpose as hereinafter is mentioned, nor as to any daughter than her age of twenty-one years or day of marriage, in such shares if more than one, and in such manner as the person for the time being exercising this power shall direct or appoint: Provided always, that if any person shall exercise the power of jointuring or charging with portions conferred by this Article before he shall become entitled to the possession or receipt of the rents and profits of the said hereditaments, then and in every such case the rent-charge or sum of money charged for portions under such exercise of the same power shall not be a lien or charge upon the hereditaments expressed to be charged therewith, nor become payable, nor carry interest unless and until the person by whom the same shall have been charged or some issue of his shall or if of full age would have become entitled under these presents to such possession or receipt as aforesaid: Provided also that the said hereditaments shall not under the powers of jointuring conferred by this Article and by Article 6 be subject or liable at one and the same time to the payment of rent-charges exceeding together the yearly sum of £——, so that if but for this proviso the said hereditaments would have been charged with a greater yearly sum than £—— the payment of the yearly rent occasioning such excess or such part thereof as shall occasion the same shall during the time of such excess be suspended, and for this purpose rent-charges by way of jointure shall have precedence according to the priority in order of limitation of the estates of the persons by whom the same shall have been created: Provided also that the said hereditaments shall not under the powers of charging with portions conferred by this Article and by Article 6 be made subject or liable to the pay-

RE-SETTLEMENT BY FATHER AND ELDEST SON.

and to charge with portions for younger children.

Proviso that no portion shall be a lien until the determination of estates preceding the estate of the appointor.

Proviso limiting total amount of jointures charged at one time.

Proviso limiting total amount of portions.

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ment of any sum or sums of money exceeding in the whole the principal sum of £——, and moneys to be charged for portions as aforesaid shall have precedence according to the priority in order of limitation of the estates of the several persons exercising this power.

Power to same tenants for life to limit terms for raising portions,

8. If the said A. B. or any subsequent tenant for life shall exercise the power of charging with portions hereinbefore conferred on him, it shall be lawful for him by the same or any other deed or by his will to limit and appoint the hereditaments charged with portions as aforesaid to trustees for any term or terms of years without impeachment of waste, Upon such trusts for raising the money charged for portions, together with the costs and expenses of and incidental to the execution of such trusts, as the person for the time being exercising this power shall think fit: And the person exercising this power may, in and by such appointment, direct or authorize the trustees of the term to be thereby created during the minority of any child who, if of full age, would be entitled in possession to a portion under such appointment to raise out of the rents and profits of the hereditaments comprised in the same term or otherwise, such annual sum as the person exercising this power shall direct, or as the said trustees shall think fit, not exceeding what interest on the expectant portion of such minor would amount to after the rate of £4 per cent. per annum, and to apply the same for the maintenance and education of such minor, with liberty for the said trustees to pay the same to the guardian or any of the guardians of such minor for the purpose aforesaid, without being liable to see to the application thereof: And the person for the time being exercising this power may also, if he thinks fit, by any such appointment as aforesaid, authorize the said trustees to raise by mortgage or otherwise any part or parts not exceeding together one moiety of the presumptive portion of any son under such appointment, and to apply the same for the advancement, preferment, or benefit of such son.

and annual sums for maintenance;

and to confer power of advancement.

Definition of term "younger sons."

9. The term "younger sons" hereinbefore used with reference to the powers of charging with portions shall be construed to mean and include every son of the person for the time being exercising the said power not being at his birth or becoming during his minority an eldest or only son entitled to the

hereditaments hereby settled for an estate in tail-male in possession, or in remainder immediately expectant on the life estate of his father, or on some estate prior in order of limitation to such life estate; and also (if the person exercising the said power shall so declare by deed or will, but not otherwise), any son who being an eldest or only son entitled in remainder as aforesaid when he attains the age of twenty-one years shall afterwards die before his estate tail falls into possession, without having disentailed the said hereditaments or any part thereof with the consent of the protector of the settlement (*x*). RE-SETTLEMENT BY FATHER AND ELDEST SON.

10. (*The same as Article* 6 *of Precedent No. XXVIII., supra*, p. 380.)

11. The tenant for life or other person or persons having for the time being power under the Settled Land Acts, 1882 to 1890, to sell or lease the hereditaments hereby settled (including the trustees of these presents on behalf of any infant) shall have the following powers in addition to those conferred by the said Acts, namely (*Additional powers as in Precedent No. XXVIII., Article* 7, *supra*, p. 382). Additional powers given to tenant for life.

[12. (*Same as Article* 8 *of Precedent No. XXVIII., supra*, p. 383).]

13. It shall not be necessary for any tenant for life under these presents, when intending, &c. (*sales, &c. may be made under statutory power without giving notice to trustees, supra*, p. 383).

14, 15, 16. (*Same as Articles* 10, 11, *and* 12 *of Precedent No. XXVIII., substituting in Article* 11 "any tenant for life or person having the powers of a tenant for life" *for* "the said A. B.")

(*x*) See p. 377, *supra*, note. In that note it is submitted that it is right to exclude from a portion the representatives of an eldest or only son who dies before his estate tail falls into possession, on the ground that such son when he attains twenty-one may, with the concurrence of his father, bar the entail, and provide for his family, and that it is not to be presumed that the father will refuse such concurrence without sufficient reason. But this argument is not conclusive when applied to a set of limitations such as those in the above precedent. The tenant for life for the time being may happen to be the uncle, and not the father, of the first tenant in tail, and in such a case it is not impossible that he may withhold his consent to a re-settlement of the estates on his nephew coming of age, and thus deprive the latter of the opportunity of making a provision for his wife and younger children. To meet this possibility the appointor is enabled, if he thinks fit, to let in an eldest son dying before his estate tail falls into possession, and without having disentailed.

RE-SETTLEMENT BY FATHER AND ELDEST SON.

17. The said W. B. and A. B. as settlors in exercise of the powers for this purpose given to them by the secondly hereinbefore recited indenture bearing even date with these presents, and of all other powers (if any) them hereunto enabling, hereby appoint that such of the hereditaments described in the first schedule to these presents as are of copyhold tenure, And all other (if any) the copyhold hereditaments comprised in the secondly hereinbefore recited indenture of even date herewith shall (subject to the charges now subsisting in and affecting the same under the said indenture of settlement) henceforth go, remain, and be held upon such trusts and with and subject to such powers and provisions as will correspond, as nearly as the difference of tenure will permit, with the uses, powers, and provisions hereinbefore declared and contained of and concerning the freehold hereditaments hereby settled, but so as not to increase or multiply charges or powers of charging.

Appointment of copyholds upon trusts corresponding with uses of freeholds.

Appointment of consols and money secured on mortgage representing part of the settled estate upon same trusts as proceeds of sale of real estate.

18. The said W. B. and A. B. as settlors in exercise of the powers for this purpose given to them by the first hereinbefore recited indenture bearing even date herewith, and of all other powers (if any) them hereunto enabling, hereby appoint that the said sum of £—— $2\frac{3}{4}$ per cent. consolidated stock, and the said sum of £——, secured by mortgage as aforesaid, shall (subject to the charges now subsisting in and affecting the same under the said indenture of settlement) henceforth go to and be vested in the trustees of these presents, to be by them held upon the trusts which would be applicable thereto if the same were capital money or investments representing capital money arising from the sale of part of the hereditaments hereby settled under the Settled Land Acts, 1882 to 1890.

19. (*Same as in No.* 13 *in Precedent No. XXVIII.*)

Appointment of new trustees.

20. The power of appointing new trustees conferred by the Conveyancing and Law of Property Act, 1881, shall, for the purposes of these presents, be vested in the said W. B. and A. B. during their joint lives, and in the survivor of them during his life.

Power of leasing and sale and exchange contained in existing settlement to remain in force.

21. The powers of leasing and sale and exchange, and for the appointment of new trustees, contained in the said indenture of settlement of the —— day of ——, shall remain in full force during the life of the said W. B., and may be exercised so as to override the uses, powers and provisions limited and declared by

and in these presents, and any hereditaments purchased or received in exchange under any exercise of such powers shall be settled to the uses which shall be then subsisting in the hereditaments hereby settled under the joint operation of the said indenture of settlement and these presents.

RE-SETTLEMENT BY FATHER AND ELDEST SON.

In witness, &c.

The First Schedule above referred to.

The Second Schedule above referred to.

No. XXXI.

CONVEYANCE *by intended* Husband *of* Freehold Land *to secure a* Jointure *to intended* Wife, *and portions for his* Children; Proviso *enabling the* Settlor *to* substitute *other* Lands *as a security for Jointure and portions.*

CONVEYANCE TO SECURE JOINTURE.

THIS INDENTURE, made the —— day of ——, Between A. B. of, &c. (*intended husband*), of the first part, C. D. of, &c. (*intended wife*), of the second part, and E. F. of, &c., and G. H. of, &c. (*trustees*), of the third part: WITNESSETH that in consideration of a marriage intended shortly to be solemnized between the said A. B. and the said C. D., the said A. B., as settlor, hereby conveys unto the said E. F. and G. H. (hereinafter called "the trustees of these presents") (*Parcels*): To hold the same unto the trustees of these presents in fee simple: To the use of the said A. B. during his life, without impeachment of waste, with remainder, To the use that, &c. (*use that C. D. shall take thereout a jointure, supra*, p. 374): And subject to the said rent-charge, To the use of the trustees of these presents for the term of five hundred years, computed from the

Parties.

Recite that marriage is intended.

Husband conveys freeholds.

To use of husband for life;

and after his decease to the use that wife shall take jointure;

and subject thereto to use of trustees for term.

CONVEYANCE TO SECURE JOINTURE.

day of the decease of the said A. B., without impeachment of waste, UPON THE TRUSTS hereinafter declared concerning the same, AND subject thereto, TO THE USE of the said A. B. in fee simple: AND IT IS AGREED AND DECLARED that the said premises are hereinbefore limited to the trustees of these presents for the said term of five hundred years, UPON TRUST, that if there shall be any child or children of the said intended marriage, who being a son or sons shall attain the age of twenty-one years, or being a daughter or daughters shall attain that age or marry, the said trustees shall by mortgage of the said premises or part thereof for all or any part of the said term, or by or out of the rents or profits of the said premises, raise for the portion or portions of such child or children the sum of money next hereinafter mentioned (that is to say): IF there shall be one such child, the sum of £5,000; if there shall be two such children and no more, the sum of £8,000; and if there shall be three or more such children, the sum of £10,000, which sum of £8,000, or £10,000, as the case may be, shall be divided between or among such children in such shares and manner as the said A. B. shall by any deed or deeds, or by his will appoint, and in default of such appointment and so far as any such appointment shall not extend, shall be divided between them in equal shares, but so that no child taking a share under any appointment shall take any share in the unappointed part (if any) of the said money without bringing his or her appointed share into hotchpot, and accounting for the same accordingly: AND UPON FURTHER TRUST, &c. (*Trust to raise interest on unpaid portions and to raise annual sums for maintenance of infant children supra*, p. 378). PROVIDED ALWAYS and it is declared, that it shall be lawful for the trustees of these presents, upon the request in writing of the said A. B. during his life, and after his death, at the discretion of the said trustees, by all or any of the ways and means aforesaid to raise any part or parts not exceeding together one moiety of the presumptive portion of any son in the sum of money hereby directed to be raised for portions, and to apply the same for the advancement, preferment, or benefit of such son in such manner as the said A. B. shall request, or as the said trustees shall after the death of the said A. B. think fit: PROVIDED ALWAYS, that if any son for whose advancement money shall be raised as aforesaid shall die under the age of twenty-one years, the sum so raised

With remainder to the use of husband in fee.

Trusts of term to raise portions for children varying in amount according to their number.

Trustees to raise moiety of presumptive shares of sons for advancement.

shall not be reckoned or taken in account as part of the money raiseable for portions under the foregoing trust unless the same added to the money raiseable for portions shall exceed the sum of £10,000, in which last-mentioned case the money raiseable for portions shall be reduced to such a sum as with the sum raised for advancement as aforesaid will make together £10,000: AND IT IS DECLARED that subject to the foregoing trusts and power the trustees of these presents shall permit the rents and profits of the hereditaments comprised in the said term to be received by the person or persons for the time being entitled to the said hereditaments in remainder immediately expectant on the said term: AND IT IS DECLARED that these presents shall be deemed a settlement, and that the said E. F. and G. H. shall be deemed the trustees hereof for all the purposes of the Settled Land Acts, 1882 to 1890: PROVIDED ALWAYS that it shall not be necessary for the said A. B. when intending to make a sale, exchange, lease, mortgage, or charge under the powers of the said Acts, to give any notice of his intention in that behalf to the trustees of these presents, or their solicitor: PROVIDED ALWAYS and it is hereby further declared that if the said A. B. shall at any time hereafter make other provision for securing the said annual sum of £—— payable to the said C. D., and the money raiseable for portions as aforesaid to the satisfaction of the trustees of these presents, either by settling other freehold, copyhold, or leasehold hereditaments of sufficient value to the uses, upon the trusts, and with and subject to the powers and provisions hereinbefore limited, declared and contained concerning the said freehold premises hereby conveyed, or by investing in the names of the said trustees, in or upon any stocks, funds, or securities authorized by law as investments for trust-moneys, such a sum of money as in the opinion of the trustees will be sufficient for that purpose, then and in such case the said yearly rent-charge of £——, and the term of five hundred years respectively hereinbefore limited shall cease and be void: AND IT IS ALSO DECLARED that the statement or certificate in writing of the trustees of these presents that the said A. B. has made other provision for securing the said annual sum and portions to the satisfaction of the said trustees shall be conclusive evidence of the fact so stated, and no person hereafter deriving title to

Subject to above trusts, rents to be paid to reversioner.

Settled Land Act to apply except as to notice of sales, &c.

Power to settlor to substitute other lands or stock as a security for jointure.

Certificate of trustees to be sufficient evidence of due provision having been made for jointure and portions.

CONVEYANCE TO SECURE JOINTURE.

the hereditaments hereby conveyed, or any part thereof, shall be bound or concerned to see that such provision is of the nature and value hereinbefore required, or otherwise as to the nature or sufficiency of the same: AND IT IS ALSO DECLARED that the power of appointing new trustees, conferred by sect. 31 of the Conveyancing and Law of Property Act, 1881, shall be vested in the said A. B. during his life, and that any trustees appointed under that power shall be trustees for the purposes of the Settled Land Acts, as well as for the purposes herein expressed.

IN WITNESS, &c.

No. XXXII.

UNDER POWER TO JOINTURE AND CHARGE WITH PORTIONS.

SETTLEMENT *upon* MARRIAGE *of tenant for life in possession in exercise of a* POWER *of* JOINTURING *and* CHARGING *with* PORTIONS *for younger Children. Power to* HUSBAND *if he* MARRIES AGAIN *to admit* CHILDREN *of* SUBSEQUENT MARRIAGE *to* SHARE *in* SUM *provided for* PORTIONS.

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*intended husband*), of the first part, C. D. of, &c. (*intended wife*), of the second part, and E. F. of, &c., and G. H. of, &c. (*trustees*), of the third part (*Recite settlement under which intended husband has a power to charge the settled estates with a jointure in favour of wife, and with portions for younger children*): AND WHEREAS some of the hereditaments comprised in the said indenture of settlement have been sold under a power of sale therein contained, and other hereditaments have been purchased with the proceeds of such sale and have been settled to the uses of the said indenture: AND WHEREAS a marriage is intended shortly to be solemnized between the said A. B. and the said C. D.: AND WHEREAS upon the treaty for the said intended marriage it was agreed that the said A. B.

Recital of settlement, and that some of the settled lands have been sold, and other lands purchased.

Recital of intended marriage.

Agreement to exercise powers.

should exercise, in the manner hereinafter expressed, the powers of jointuring and charging with portions so as aforesaid vested in him by the said indenture of settlement: NOW THIS INDENTURE, made in consideration of the said intended marriage, WITNESSETH as follows:— UNDER POWER TO JOINTURE AND CHARGE WITH PORTIONS. Witnessing part.

1. THE said A. B., as settlor, in exercise of the power for this purpose given to him by the said indenture of settlement as aforesaid, and of all other powers (if any) him hereunto enabling, hereby appoints that the said C. D., if she shall survive the said A. B., shall receive during her life a yearly rent-charge of £—— for her jointure, to be issuing out of all the hereditaments now subject to the uses of the said indenture of settlement (hereinafter called "the settled hereditaments") (*y*), and to be paid by equal half-yearly payments, the first payment thereof to be made at the expiration of six calendar months after the death of the said A. B. Husband appoints jointure to wife.

2. THE said A. B., as settlor, in exercise of the power for this purpose given to him by the said indenture of settlement as aforesaid, and of all other powers (if any) him hereunto enabling, hereby appoints that the settled hereditaments shall be charged, &c. (*charge of* £15,000 *for portions for younger children to be divided, &c., with proviso for reducing amount charged in the event of there being only one, two, or three younger children, as in Precedent No. XXVIII., Art.* 2, *supra*, pp. 376, 377, *substituting the words* "the said indenture of settlement" *for* "these presents," *and the words* "the settled hereditaments" *for* "the hereditaments hereby settled"). Husband charges with portions for younger children.

3. THE said A. B., as settlor, in exercise of the power for this purpose given to him by the said indenture of settlement and of all other powers (if any) him hereunto enabling, hereby appoints the settled hereditaments (*z*) unto the said E. F. and G. H. (hereinafter called "the trustees of these presents"), for the term of 1,000 years computed from the decease of the said A. B. without impeachment of waste: UPON TRUST, &c. (*to raise* Husband appoints settled hereditaments to trustees for term.

(*y*) If a part only of the settled hereditaments is charged, substitute "the hereditaments described in the schedule hereto, being part of the hereditaments subject to the uses of the said indenture."

(*z*) *Or*, "the hereditaments described in the schedule hereto."

UNDER POWER TO JOINTURE AND CHARGE WITH PORTIONS.

portions, and costs and expenses, and also to raise interest on unpaid portions and annual sums for maintenance, and to permit rents to be received by reversioner as in Precedent No. XXVIII., Article 3, supra, pp. 377, 378).

4. (*Power of advancement, supra,* p. 378.)

Power to husband to appoint that children of a subsequent marriage shall share in sum provided for portions.

5. If the said A. B. shall marry again it shall be lawful for him by any deed or deeds or by his will to appoint and declare that his children by any such subsequent marriage or marriages (being daughters or younger sons) shall share in the sum hereby provided for portions: And in such case the foregoing provisions shall take effect in all respects as if the children of such subsequent marriage or marriages had been children of the now intended marriage: Provided always that the part of the sum hereby provided for portions to which the issue of a subsequent marriage or marriages shall become entitled under any appointment to be made by the said A. B. pursuant to the power in that behalf given to him by Article 2 as extended by this Article or otherwise, shall not bear a greater proportion to that part of the same sum which the issue of the now intended marriage shall take between them than the number of children of such subsequent marriage or marriages who being younger sons shall attain the age of twenty-one years, or being daughters shall attain that age or marry, shall bear to the number of children of the now intended marriage, who being younger sons shall attain the age of twenty-one years, or being daughters shall attain that age or marry (*a*).

But in such case the children of a subsequent marriage not to take a larger proportion than children of intended marriage.

Settlement to be void if marriage not within twelve months.

6. These presents shall be void if the said intended marriage is not solemnized within twelve calendar months from the date hereof.

In witness, &c.

(*a*) The power in the text to admit children of a future marriage to participate in the sum provided for portions may reasonably be required on the part of the husband where he has no other means of making a provision for such children.

No. XXXIII.

SETTLEMENT *on* MARRIAGE *by a* TENANT *for* LIFE *in* REMAINDER *expectant on his* FATHER'S *life estate—in exercise of* POWERS *of* JOINTURING *and* CHARGING *with* PORTIONS.

UNDER POWERS TO JOINTURE AND CHARGE WITH PORTIONS BY SON.

THIS INDENTURE, &c. (*Parties as in last Precedent. Recite Settlement under which W. B., father of A. B., is tenant for life in possession with remainder to A. B. for life, with remainder to sons of A. B. successively in tail male, and with power to A. B. to jointure a wife and charge with portions for younger children. Recite also that marriage is intended, and agreement to exercise powers as in last Precedent*). Parties and recitals.

NOW THIS INDENTURE, made in consideration of the said intended marriage, WITNESSETH as follows:—

1. THE said A. B., as settlor, in exercise of the power for this purpose given to him by the said indenture of settlement and of all other powers (if any) him hereunto enabling, hereby appoints that if the said C. D. shall survive the said A. B., she the said C. D. shall from and after the death of the said A. B. receive for her jointure the yearly rent-charge next hereinafter mentioned (that is to say): IF the said W. B. shall survive the said A. B. then during the joint lives of the said W. B. and C. D. a yearly rent-charge of £——: and if the said W. B. shall die in the lifetime of the said A. B., or having survived the said A. B. shall die in the lifetime of the said C. D., then from and after the decease of the survivor of the said W. B. and A. B. a yearly rent-charge of £——, the said yearly rent-charge payable for the time being as aforesaid to be issuing out of the hereditaments described in the schedule hereto, and to be paid by equal half-yearly payments, the first thereof to be made at the expiration of six calendar months after the commencement of the said rent-charge. Appointment of jointure to intended wife with usual powers.

2. THE said A. B., as settlor, in exercise of, &c. (*as before*), hereby appoints that, subject to the yearly rent-charge hereinbefore limited to the said C. D., the hereditaments described in the schedule hereto shall be charged with the sum of £15,000 Husband charges with portions for younger children.

UNDER POWERS TO JOINTURE AND CHARGE WITH PORTIONS BY SON.

(reducible as hereinafter is mentioned) for the portions of the children of the said marriage, who being younger sons shall attain the age of twenty-one years, or being daughters shall attain that age or marry, and for this purpose the expression "younger sons" shall be deemed to mean and include every son not being at his birth or becoming during his minority an eldest or only son entitled for the time being under these presents to the hereditaments settled by the said indenture of settlement for an estate in tail-male in possession or in remainder immediately expectant on the decease of the survivor of the said W. B. and A. B.: AND the sum of money charged as aforesaid shall be divided, &c. (*as in Precedent No. XXVIII., supra*, p. 376, *down to the directions as to time of payment*), the portion of each child who attains a vested interest after the death of the survivor of the said W. B. and A. B. to be payable to him or her upon the vesting thereof, and the portion of every child who attains a vested interest therein during the lives of the said W. B. and A. B. or the life of the survivor of them to be payable to him or her upon the death of such survivor. (*Hotchpot clause and proviso for reducing amount charged if there are only one, two, or three younger children, supra*, p. 376.)

Time of payment of portions.

Appointment to trustees for a term.

3. THE said A. B., as settlor, in exercise, &c. (*as before*), hereby appoints the hereditaments described in the schedule hereto unto the said E. F. and G. H. (hereinafter called "the trustees of these presents"), for the term of 1,000 years, computed from the decease of the survivor of the said W. B. and A. B. without impeachment of waste, UPON TRUST, &c. (*to raise portions and interest on unpaid portions, as in Precedent No. XXVIII., supra*, pp. 377, 378); AND UPON FURTHER TRUST that if at the decease of the survivor of the said W. B. and A. B., any child entitled in expectancy to a portion, &c. (*trust to raise annual sums for maintenance of infant younger children and to permit rents to be received by reversioner, supra*, p. 378).

Maintenance clause.

Advancement clause.

4. (*Advancement clause as in Precedent No. XXVIII., supra*, p. 378, *adding the following proviso at the end*): PROVIDED ALWAYS that no money shall be raised under this power during the life of the said W. B. without his consent in writing.

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

No. XXXIV.

SETTLEMENT *upon* MARRIAGE *of a* JOINTURE *for wife and* PORTIONS *for younger children where* SETTLOR *has a remote estate in* REMAINDER.

UNDER POWER TO JOINTURE AND CHARGE WITH PORTIONS BY REMAINDERMAN.

THIS INDENTURE, &c. (*Parties and recitals as in last Precedent, adding recitals showing what estates prior to the settlor's life estate are still subsisting*).

NOW THIS INDENTURE, made in consideration of the said intended marriage, WITNESSETH as follows:—

Appointment of jointure to intended wife.

1. THE said A. B., as settlor, in exercise of the power for this purpose given to him by the said indenture of settlement as aforesaid and of all other powers (if any) him hereunto enabling, hereby appoints that if the said C. D. shall survive the said A. B., and if the estates for life and in tail limited by the said indenture of settlement and having precedence over the estates for life thereby limited to the said A. B. shall fail or determine in the lifetime of the said C. D., then and in such case the said C. D. shall from and after the death of the said A. B. or the failure or determination of the said preceding estates (which shall last happen) receive during her life a yearly rent-charge of £—— for her jointure to be issuing out of the settled hereditaments and to be paid by equal half-yearly payments, the first payment thereof to be made at the expiration of six calendar months after the time hereby appointed for the commencement of the said rent-charge.

Husband charges settled hereditaments with portions.

2. THE said A. B., as settlor, in exercise of the power for this purpose given to him by the said indenture of settlement and of all other powers (if any) him hereunto enabling, hereby appoints that, subject to the uses and estates limited by the said indenture of settlement and preceding his estate for life, and subject also to the said yearly rent-charge hereinbefore limited, the settled hereditaments shall be charged with, &c. (*charge for portions, supra*, p. 376); and for this purpose the expression "younger sons" shall be deemed to mean and include every son not being at his birth or becoming during his minority an eldest or only son entitled under the said indenture of settlement to the

UNDER POWER TO JOINTURE AND CHARGE WITH PORTIONS BY REMAINDERMAN.

settled hereditaments for an estate in tail male in possession or in remainder immediately expectant on the life estate of the said A. B., or on some estate prior in order of limitation to such life estate, and also any son who being an eldest or only son entitled in remainder as aforesaid when he attains the age of twenty-one years, shall die before his estate tail falls into possession without having disentailed the said hereditaments or any part thereof, with the consent of the protector of the settlement (*b*);

Time for payment of portions.

And the sum of money charged as aforesaid shall be divided, &c. (*as in Precedent No. XXVIII., supra*, p. 376, *down to directions as to time of payment of each share*), the portion of every child under the foregoing charge to be paid to such child, being a son, at his age of twenty-one years, or being a daughter, at her age of twenty-one years or day of marriage (which shall first happen), if the said A. B. shall be then dead and all estates for life and in tail limited by the said indenture of settlement having precedence over the life estate of the said A. B. shall then have determined, but if the said A. B. shall be then living, or any of such preceding estates shall be then subsisting, then such portion shall not be payable until the decease of the said A. B., and the determination of all the preceding estates, unless the said A. B. (if living) and all persons (if any) entitled to the preceding estates shall direct the same to be raised and paid earlier. (*Hotchpot clause, and proviso for reducing amount charged in the event of there being only one, two, or three younger children, supra*, pp. 376, 377.)

Appointment of settled hereditaments to trustees for a term to raise portions and annual sums for maintenance.

3. The said A. B., as settlor, in exercise of the power for this purpose given to him by the said indenture of settlement, and of all other powers (if any) him hereunto enabling, hereby appoints that (subject and without prejudice to the uses and estates limited by the said indenture of settlement, and preceding the estate for life thereby limited to the said A. B., and subject to the said yearly rent-charge of £—— hereinbefore limited), the settled hereditaments shall go, remain, and be to the use of the said E. F. and G. H. (hereinafter called "the trustees of these presents"), for the term of 1,000 years computed from the decease of the said A. B., and so that the said term shall follow in order of limitation the life estate of the said

(*b*) See p. 395, *supra*, note.

A. B., UPON, &c. (*Trusts to raise portions, and interest on unpaid portions, as in Precedent No. XXVIII., supra*, p. 377), AND UPON FURTHER TRUST that if at the decease of the said A. B., or the failure or determination of the estates for life and in tail preceding the estate for life of the said A. B. under the said indenture of settlement (which shall last happen), any child, &c. (*Trust to raise annual sums for maintenance of infant younger children, &c., supra*, p. 378.) UNDER POWER TO JOINTURE AND CHARGE WITH PORTIONS BY REMAINDERMAN.

4. (*Advancement clause as in Precedent No. XXVIII., supra*, p. 378, *adding at the end the following proviso*): PROVIDED ALWAYS that no money shall be raised under this power during the continuance of any estate or estates for life or in tail under the said indenture of settlement, having precedence over the life estate of the said A. B. without the consent of the person or persons entitled to such preceding estate or estates. Advancement clause.

IN WITNESS, &c.

No. XXXV.

POST-NUPTIAL SETTLEMENT *of a sum of* STOCK *on the* WIFE *and* CHILDREN *of the* SETTLOR (*c*). POST-NUPTIAL SETTLEMENT.

THIS INDENTURE, made the —— day of ——, 18—, BETWEEN A. B. of, &c. (*settlor*), of the one part, and C. D. and E. F. of, &c. (*trustees*), of the other part: WHEREAS the said A. B., being desirous of making some provision for his wife and issue, has purchased the sum of £—— $2\frac{3}{4}$ per Cent. Consolidated Stock, in the names of the said C. D. and E. F., to be held by them upon the trusts and with and subject to the powers and provisions hereinafter declared and contained concerning the same: NOW THIS INDENTURE WITNESSETH, that the said A. B., in consideration of his natural love and affection for his wife and issue, hereby irrevocably directs and declares, and IT IS HEREBY AGREED as follows:— Parties. Recital of intention to settle. Witnessing part.

1. THE said C. D. and E. F. (hereinafter called "the trustees"), shall retain the said, &c. (*Trust to retain stock or change investment, supra*, p. 293.) Trustees to retain or change investments.

(*c*) As to voluntary settlements, see *supra*, p. 279.

POST-NUPTIAL SETTLEMENT.

Trusts for settlor and wife and issue.

2. THE trustees shall pay the income of the trust funds to the said A. B. during his life, and after his death shall pay the said income to X. B., the wife of the said A. B., if she shall survive him: AND from and after the death of the said A. B., and the death or second marriage (which shall first happen) of the said X. B., shall stand possessed of the trust funds IN TRUST for all or any one or more of the issue of the said A. B. as well by the said X. B. as by any future wife (such issue being born in the lifetime of the said A. B.), at such ages or times, age or time (not being earlier as to any object of this power than his or her age of twenty-one years or day of marriage), in such shares, if more than one, and in such manner as the said A. B. shall by deed or will appoint, and in default of such appointment, and so far as any such appointment shall not extend, IN TRUST for all the children of the said A. B. as well by the said X. B. as by any future wife, who, being a son or sons, shall attain the age of twenty-one years, or being a daughter or daughters, shall attain that age or marry, in equal shares; and if there shall be only one such child, the whole to go to that one child: But so nevertheless that, &c. (*hotchpot clause*, *supra*, p. 317); And if there shall be no such child, then IN TRUST for the said A. B. absolutely.

Power to settlor to appoint life interest to a future wife.

3. NOTWITHSTANDING the foregoing trusts in favour of his issue, the said A. B. may, if he marries again, by deed or will appoint that the whole or any part of the income of the said trust funds shall be paid after his death to his widow during her life, or for any less period.

Advancement clause.

4. THE trustees may at any time or times raise any part or parts, not exceeding together one moiety of the vested or presumptive share of any child of the said A. B. under these presents, and apply the same for his or her preferment, advancement, or benefit, but so that every such advancement shall be with the consent of the parents or surviving parent of the child, or, if there shall be no surviving parent, at the discretion of the trustees.

5. (*Investment clause*, *supra*, p. 318.)

Appointment of new trustees clause.

6. THE power of appointing new trustees conferred by statute shall for the purpose of these presents be vested in the said A. B. during his life.

IN WITNESS, &c.

No. XXXVI.

VOLUNTARY SETTLEMENT (*d*) *by a* BACHELOR *for the benefit of* HIMSELF AND HIS ISSUE, *with* POWER *to appoint* LIFE INTEREST *to any* WIFE; POWER OF REVOCATION *with the consent of the* TRUSTEES.

VOLUNTARY SETTLEMENT BY A BACHELOR.

THIS INDENTURE, made the —— day of ——, 18—, BETWEEN A. B. of, &c. (*settlor*), of the one part, and C. D. of, &c., and E. F. of, &c. (*trustees*), of the other part (*recite will under which settlor is entitled to a share of the testator's residuary estate, subject to the life interest of the testator's wife*): AND WHEREAS the said A. B. is desirous of settling his reversionary share under the said will in the manner hereinafter expressed, and the said C. D. and E. F. have at his request agreed to be the trustees of the said intended settlement: NOW THIS INDENTURE WITNESSETH as follows:—

Parties.

Recital of desire to make settlement.

1. THE said A. B., as settlor, hereby assigns unto the said C. D. and E. F. (hereinafter called "the trustees"), ALL, &c. (*describe the settlor's share intended to be settled*): TO HOLD the same (subject to the life interest therein of the said ——) unto the trustees, UPON THE TRUSTS and subject to the powers and provisions hereinafter declared and contained.

Settlor assigns reversionary share to trustees.

2. THE trustees shall, &c. (*Trust to require transfer when shares fall into possession, and to invest and vary investment, supra*, p. 315.)

Trust to invest.

3. THE trustees shall pay the income of the trust funds to the said A. B. during his life, and the said A. B. may by deed or will appoint that after his death the whole or any part of the said income shall be paid to any widow whom he may leave, during her life, or for any less period.

Trust to pay income to settlor for life, with power to appoint life interest to a widow for life.

4. AFTER the death of the said A. B., and subject to any interest appointed to a widow as aforesaid, the trustees shall stand possessed of the trust funds, IN TRUST for all or any one or more of the issue of the said A. B. born in his lifetime, at such age or time, ages or times, in such shares, if

(*d*) As to voluntary settlements, see *supra*, p. 279.

VOLUNTARY SETTLEMENT BY A BACHELOR.

more than one and in such manner as the said A. B. shall by deed or will appoint, and in default of any such appointment, and so far as any such appointment shall not extend, IN TRUST for all the children (if any) of the said A. B. who being a son or sons, shall attain the age of twenty-one years, or being a daughter or daughters, shall attain that age or marry, in equal shares, and if there shall be only one such child, then the whole to go to such one child: BUT so that no child who or any of whose issue shall take any share under any such appointment as aforesaid, shall take any share in the unappointed part (if any) of the trust funds without bringing the share or shares appointed to him or her, or to his or her issue into hotchpot, and accounting for the same accordingly: AND if there shall be no issue of the said A. B. in whom the trust funds shall become absolutely vested under the foregoing trusts, then IN TRUST for such person or persons being a brother or sister or brothers or sisters, or the issue of a brother or sister or brothers or sisters of the said A. B., and in such manner as the said A. B. shall by deed or will appoint, and in default of such appointment, and so far as any such appointment shall not extend, IN TRUST for the person or persons who, under the statutes for the distribution of the effects of intestates, would have become entitled thereto at the decease of the said A. B. if he had died possessed thereof and intestate.

Trusts for children of settlor.

In default of issue for brothers and sisters, &c., of settlor as he shall appoint, and in default of appointment for his next of kin.

5, 6. (*Advancement and investment clauses, supra*, pp. 317, 318.)

7. THE power of appointing new trustees conferred by statute shall for the purposes of these presents be vested in the said A. B. during his life.

Power for settlor to revoke with consent of trustees.

8. IT shall be lawful for the said A. B. at any time or times hereafter, with the consent of the trustees, by any deed or deeds under the hand and seals of the said A. B. and of the trustees, to revoke all or any of the trusts declared by these presents of and concerning the trust funds or any part thereof, and to declare any new or other trusts of or concerning the same: AND the trustees may give or withhold their consent to any such revocation and new appointment as aforesaid at their absolute discretion, and without being answerable for the exercise of such discretion.

IN WITNESS, &c.

No. XXXVII.

APPOINTMENT *by* PARENTS *under a* POWER *in their* MARRIAGE SETTLEMENT *among their* CHILDREN *equally, some of such children being of age, and some under age, with* POWER *of* REVOCATION *except as to the share of a* SON *about to marry* (*e*).

APPOINTMENT UNDER POWER TO CHILDREN.

TO ALL TO WHOM THESE PRESENTS SHALL COME, A. B. of, &c., and C. his wife (*appointors*), SEND GREETING. WHEREAS by an indenture, dated the —— day of ——, 18—,

Recite settlement.

(*e*) A power to appoint to children in such proportions as the donee shall direct, is effectually exercised by an appointment of a limited interest to one, and of the *corpus* of the fund to another. Alexander *v.* Alexander, 2 Ves. sen. 640; Bristowe *v.* Ward, 2 Ves. 336. So a general power to appoint a fund amongst the children in such manner as the donee shall direct, or to charge real estate with a sum for portions of children, authorizes an appointment to trustees in trust to pay the income or rents to a daughter for her separate use. Alexander *v.* Alexander, *ubi supra;* Maddison *v.* Andrew, 1 Ves. sen. 59; Ratcliffe *v.* Hampson, 1 Jur. N. S. 1104; Thornton *v.* Bright, 2 My. & Cr. 230; Dickinson *v.* Mort, Ha. 178. But if there is a restraint on anticipation, and the daughter was unborn at the date of the creation of the power, the Court will reject the words creating such restraint as infringing the rule against perpetuities, and uphold the appointment in other respects. Fry *v.* Capper, 1 Kay, 170; *Re* Teague's Settlement, L. R. 10 Eq. 564; *In re* Cunynghame's Settlement, *ib.* 11 Eq. 324; Buckton *v.* Hay, 11 Ch. D. 645; Herbert *v.* Webster, 15 Ch. D. 610.

Construction of powers of appointment amongst children.

Under the ordinary power of appointment among children, an appointment may be made to such uses or upon such trusts as a child, being an object of the power, shall by deed or will (and if the child was born at the time of the creation of the power, but not otherwise, as such child shall by will alone) appoint. Jebb *v.* Tugwell, 7 De G. Mac. & Gor. 668; Phipson *v.* Turner, 9 Sim. 227; Morgan *v.* Gronow, L. R. 16 Eq. 1.

Appointment may be made to such uses, &c., as child shall appoint.

Again, under such a power the fund may be appointed to trustees in trust for the objects of the power (Trollope *v.* Linton, 1 Sim. & St. 477); and real estate may be appointed to trustees upon trust to sell and divide the proceeds among the objects. Roberts *v.* Dixall, 2 Eq. Cas. Abr. 668, pl. 19; Long *v.* Long, 5 Ves. 445; Kenworthy *v.* Bate, 6 Ves. 793; Fowler *v.* Cohn, 21 Beav. 360; Cowx *v.* Foster, 1 J. & H. 30.

Appointment may be made to trustee for object;

Again, under such a power the fund may by the direction of a child, either in contemplation of or subsequently to marriage, be appointed in favour of his or her issue, or to the trustees of his or her settlement. Such an arrangement is regarded, first, as an appointment, and then as a settlement by the object of the power. Thompson *v.* Simpson, 1 Dru. & War. 459. See also White *v.* St. Barbe, 1 V. & B. 399; Sug. Pow. 670; Limbard *v.* Grote, 1 My. & K. 1; Morgan *v.* Gronow, L. R. 16 Eq. 1. And an appointment of this kind made on the marriage of an infant

or, by direction of object, to persons who are not objects.

APPOINTMENT UNDER POWER TO CHILDREN.

and made between the said A. B., of the first part, the said C. B. (then C. D.), of the second part, and E. F., G. H. and I. K., of the third part (being the settlement made in considera-

daughter by the direction of her intended husband has been held good. Fitzroy *v.* Duke of Richmond, 27 Beav. 190.

In Wright v. Goff, 22 Beav. 207, a tenant for life had a power of appointing a fund amongst her children. A married woman was the only object of the power, and an arrangement was entered into between the tenant for life and the married woman and her husband, whereby the fund was appointed to her and then re-settled, giving an interest to her children and to a stranger. The husband survived, and the transaction was held to be binding on him.

As to fraudulent exercise of powers.

In exercising a power of appointment among children or other objects, it must be borne in mind that the substantial motive of the appointment must be the benefit of the objects of the power, and that an appointment made to such objects with a view not to their exclusive benefit, but for the benefit either wholly or partially of the donee of the power, or any other person, is void, as being what is technically called a fraud on the power.

Appointments in favour of infant children, who die soon afterwards, how far good.

In Hitchinbroke *v.* Seymour, 1 B. C. C. 395, lands were settled in strict settlement, with a limitation of a term to trustees, to raise either in the lifetime of the tenant for life, if he should so direct, or after his decease, portions for his younger children, to be paid at such time as the tenant for life should direct. The tenant for life directed the trustees to raise the sum for an only daughter, being fourteen years of age, immediately. The daughter died shortly afterwards, and then the father claimed the sum as her administrator; but the Court held that this was a bad execution of the power. It appears, from what was said by Lord Eldon in Macqueen *v.* Farquhar, 11 Ves. 479, that the father knew that the child was in a consumption, so that the appointment was evidently made with a view to his own benefit; and this must be considered as the true ground of the judgment, rather than that given in Brown's Report, viz., that "it is contrary to the nature of a charge for children to have it raised before it is wanted." In Fearon *v.* Desbrisay, 14 Beav. 635, personal estate was settled in trust for A. for life, and after his decease for his children, at such ages, &c. as he should appoint, and, in default of appointment, for the children equally at twenty-one, with a power of maintenance and a gift over in case no child should become absolutely entitled. A., having a child eight months old, and another *en ventre sa mère*, appointed the fund to all his children living at his decease. One of the children survived A., but died an infant, and it was held that the appointment was good, and that the fund passed to the child's mother as administratrix. It will be seen that in this case the donee of the power could gain no personal benefit from the mode in which he exercised it, and there was no evidence to show that the appointment was not made *bonâ fide*. In Beere *v.* Hoffmister, 23 Beav. 103, a joint power of appointment amongst children in the usual form was exercised by the husband and wife in favour of an only daughter, who was four years old. The daughter was in good health at the time of the appointment, but died shortly afterwards, whereby the fund passed to her father as her administrator. It was held that the appointment was good; but in giving judgment the M. R. observed that if the father could have made the appointment available for raising money, and had done so, it would have materially altered his view of the case. On the other hand, in Wellesley *v.* Mornington, 2 K. & J. 143, an appointment was made to an only son, who was then in a state of disease from

tion of the marriage then intended, and which was shortly afterwards solemnized, between the said A. B. and the said C. D.), it was agreed and declared that the said E. F., G. H., APPOINTMENT UNDER POWER TO CHILDREN.

which he died within a year, and the Court held, upon all the circumstances of the case as proved by the evidence, that the appointment was made by the father with a view to benefit himself, and was therefore void. See also Gee *v.* Gurney, 2 Coll. 486; Salmon *v.* Gibbs, 3 De G. & Sm. 343.

The result of the above cases seems to be, that an appointment to a child, however young, is not in itself necessarily fraudulent, though the effect may be to give the whole fund to the donee of the power as administrator; but that such an appointment will be held void if from the facts of the case, as, *e. g.*, from the child being in bad health at the time, and likely to die soon, it seems to the Court that the intention of the appointor was to benefit himself, and not the appointee. See Henty *v.* Wrey, 21 Ch. D. 332.

Appointment with a view to benefit strangers.

It is equally a fraud on the power if the appointment is made with a view to benefit a stranger, as, for instance, upon a secret understanding that the appointee shall re-assign the whole or part of the fund to a stranger. Daubeney *v.* Cockburn, 1 Mer. 626. In Birley *v.* Birley, 25 Beav. 299, an appointment was made to two children, who, a year afterwards, settled the appointed fund on persons who were not objects of the power, the deed containing a recital that when the appointment was made it was understood that the appointees should consider themselves as possessed of the funds upon the trust expressed in the settlement. The appointment was held void. So, also, in a case where the donee of a power to appoint amongst children executed an appointment in favour of two of her children, and such appointment was made on a previous understanding that they should re-settle the property appointed, firstly, for the benefit of themselves, and finally for persons not objects of the power, the appointment was held to be bad. Prior *v.* Prior, 10 Jur. N. S. 603.

If the motive or object of the appointment is to benefit a stranger, it is not necessary that the appointee should be ignorant of such motive or object. Thus, where a married woman, having a power of appointment among her children, appointed the fund by will to her eldest daughter, in order that she might thereout benefit her father (the testatrix's husband), it being arranged between the testatrix and her husband that after the death of the former the latter should inform the appointee of the object of the appointment, the appointment was held bad. *In re* Marsden's Trusts, 4 Drew. 594. On the other hand, an appointment made to an object of the power with this addition, "who will, I am assured, settle the same voluntarily" in favour of persons not objects, was held good, there being no bargain on the part of the appointee and he being therefore free from any obligation to settle it. *In re* Crawshay, 43 C. D. 615.

In one case, certain appointments made by a father with a view to prevent the marriage contemplated by one of his daughters, and of which he disapproved, were held to be frauds on the power and void. Topham *v.* Duke of Portland, 1 De G. J. & S. 517; 11 H. L. C. 32; L. R. 5 C. A. 40.

Suspicion not sufficient to invalidate appointment.

But a mere suspicion that the appointor's motive was to benefit himself or others is not sufficient to invalidate the appointment. Thus in M'Queen *v.* Farquhar, 11 Ves. 467, a tenant for life entered into a contract for sale, but finding that he could not make a good title without exercising a power reserved to him of appointing the estate among all or any of his children, he exercised the power in favour of his eldest son in fee. Then the father and mother (who were entitled respectively to life estates), as well as the son, conveyed the estate to the purchaser in consideration of £8,000 paid

APPOINTMENT UNDER POWER TO CHILDREN.

and I. K., their executors, administrators, and assigns, should stand possessed of certain trust funds therein particularly mentioned, UPON the trusts therein declared concerning the same

to the father, mother, and son; it was held that the power was well executed, and that the purchaser must take the title. Lord Eldon observed there was nothing to show that the son was not to receive a due proportion of the money when the contract was afterwards executed by the deed. See also Green *v.* Pulsford, 2 Beav. 70; Crockforth *v.* Sutcliffe, 25 L. J. Ch. 313; Hamilton *v.* Kirwan, 2 Jo. & Lat. 393; Roach *v.* Trood, 3 Ch. D. 429.

And if the appointment is made with a view to secure a benefit to all the objects of the power, the appointment is not bad, although the donee may to some extent participate in such benefit; as where an appointment was made to one of the objects, and the appointor and appointee then executed a deed to enable building leases to be granted, there being no power to grant building leases in the original settlement, and subject thereto the property was re-limited substantially to the old uses, the appointment was held valid. *In re* Huish's Charity, L. R. 10 Eq. 5.

Contemporaneous arrangement.

Nor does it render an appointment bad that there is a contemporaneous arrangement with the appointees, provided that their substantial interests in the property are not thereby diminished. Therefore where a tenant for life, with a power of selection amongst his children, had received of the trustees part of the trust moneys in breach of trust, and afterwards appointed to his daughters, in exclusion of his son, this money, which had been advanced to him, and a sum of £500, and contemporaneously with the appointment the daughters exchanged the sums so appointed for an estate of the father, the transaction was supported, inasmuch as the estate was not proved to be of less value than the amount given in exchange. Askham *v.* Barker, 17 Beav. 37.

In a case where, on the marriage of a daughter under age, the father made an appointment to her, and by the settlement the appointed money, and also a further sum secured by the father's bond, was settled on the usual trusts for the daughter and her husband, and the issue of the marriage, with an ultimate trust in default of issue for the father, the appointment was held good, on the ground that all that the father took was the husband's marital right, the daughter not being bound. A similar appointment and settlement in the case of another daughter who was of age was upheld by James, V.-C., on the ground that the father gave a sufficient consideration for the reversionary interest; but the Lord Chancellor on appeal thought the transaction of doubtful validity. Cooper *v.* Cooper, L. R. 8 Eq. 312; 5 C. A. 203.

Under a power of distribution amongst the children, the appointment of one share corruptly does not invalidate the appointment as to the remaining shares. Rowley *v.* Rowley, Kay, 242.

Exclusive appointment may now be made.

Where a power is given to appoint among several objects in such shares as the donee may think fit, but he is not expressly authorized to exclude any one of the objects, it was formerly necessary to give some share, however small, to every object; and if one were excluded the appointment was bad. But by the Act 37 & 38 Vict. c. 37, it is enacted that no appointment to be made after the passing of the Act of any property among several objects shall be invalid at law or in equity on the ground that any object of such power has been altogether excluded, subject to a proviso that the Act shall not apply where there is an express provision declaring the amount from which no object shall be excluded.

Where the object of a power is also entitled to a share in default of ap-

during the lives of the said A. B. and C. D., and after the decease of the survivor of them the said A. B. and C. D., IN TRUST for, &c. (*set out fully the trust for issue as husband and wife should jointly appoint*): AND WHEREAS the said I. K. having died, L. M. of, &c., was by an indenture dated the —— day of ——, 18—, indorsed on the said indenture of settlement, appointed to be a trustee of the said indenture of settlement in the place of the said I. K., under a power therein contained for that purpose: AND WHEREAS the investments of the trust funds comprised in the said indenture of settlement have been from time to time varied under a power therein contained for that purpose, and the settled trust funds now consist of, or are represented by, the particulars set forth in the schedule hereunder written: AND WHEREAS there are issue now living of the said A. B. and C. his wife, six children, namely: N. B., O. B., P. B., R. B., S. B., and T. B., of whom the said N. B., O. B., and P. B., have attained the age of twenty-one years, and the said R. B., S. B., and T. B., are under that age, and the said N. B. is about to marry X. Y. of, &c.: AND WHEREAS the said A. B. and C. his wife are desirous of making such appointment as is hereinafter expressed: NOW THESE PRESENTS WITNESS,

APPOINTMENT UNDER POWER TO CHILDREN.

Appointment of a new trustee.

Present state of trust funds.

That there are issue six children, three of age, and three under age, and one about to marry.

Witnessing part.

pointment, an assurance of his share before any appointment is made does not pass a share acquired by him under a subsequent appointment. Sweetapple *v.* Horlock, 11 Ch. D. 745.

A power to appoint by will may be released by deed; and a covenant by the donee not to exercise the power so as to diminish the share which the covenantee would take in default of appointment is a release *pro tanto*, and good. Davies *v.* Huguenin, 1 H. & M. 730; Coffin *v.* Cooper, 2 Dr. & Sm. 365.

Covenant not to exercise testamentary power.

The donee of a power of appointment among children, where there is a gift in default of appointment to the children equally, may release his power, even where, by the death of one of his children intestate, he has become entitled to a share; and if in the latter case he surrenders his life interest, the trustees will be bound, at his request, to transfer the fund to him as the personal representative of the deceased child at once. *In re* Radcliffe, (1892) 1 Ch. 227.

Release of power valid, even though appointor is benefited by it.

If a donee covenants to appoint a certain sum in favour of one of the objects, the fact that it becomes thereby his interest to comply with the covenant does not render void a subsequent appointment in accordance with the covenant.

An infant cannot execute a power over real estate, except a power simply collateral (Hearle *v.* Greenbank, 3 Atk. 695); but, as regards personalty, he may exercise, otherwise than by will, a power in gross, *i. e.*, a power over property which but for the appointment would belong to some other person. It follows that the ordinary power of appointment among children contained in the marriage settlement of an infant may be exercised by her during infancy. *Re* D'Angibau, 15 Ch. D. 228; Palmer *v.* Locke, 15 Ch. D. 294.

Execution of powers by infants.

APPOINTMENT UNDER POWER TO CHILDREN.

that the said A. B. and C. his wife, in exercise of the power for this purpose given to them by the said indenture of settlement as aforesaid, and of all other powers (if any) them hereunto enabling, hereby APPOINT that the trustees or trustee for the time being of the said indenture of settlement do and shall, from and after the decease of the survivor of them the said A. B. and C. his wife, stand possessed of all the trust funds and property subject to the trusts of the said indenture of settlement, IN TRUST for the said N. B., O. B., P. B., R. B., S. B., and T. B., in equal shares, the shares of the said N. B., O. B., and P. B. to be vested interests in them immediately upon the execution of these presents, and the shares of the said R. B. and S. B. to be vested interests in them respectively upon their respectively attaining the age of twenty-one years, and the share of the said T. B. to be a vested interest in her upon her attaining the age of twenty-one years or marrying (which shall first happen): PROVIDED ALWAYS, that if any or either of them, the said R. B., S. B., and T. B., shall die before attaining a vested interest in his or her share of the said trust funds and property, then, and in every such case, as well the original share of him or her so dying, as also any share accruing to him or her under this clause shall go and accrue to the said N. B., O. B., and P. B., and the other or others of them the said R. B., S. B., and T. B., in equal shares: PROVIDED ALSO, and it is hereby declared, that it shall be lawful for the said A. B. and C. his wife, at any time during their joint lives, or for the survivor of them during his or her life, by any deed or deeds to revoke either wholly or partially the appointment hereby made, EXCEPT that if the marriage now intended between the said N. B. and X. Y. shall be solemnized within six calendar months from the date hereof, this power of revocation shall not apply to the share of the said N. B. hereunder.

Parents in exercise of power appoint trust funds (after decease of survivor of them) to all their children equally.

Shares of those now of age to vest immediately, shares of infant sons to vest at twenty-one, and shares of infant daughters to vest at twenty-one or marriage.

Accruer clause in case of death of any child before attaining a vested interest.

Power of revocation by deed.

Except as to share of son about to marry, if marriage takes place.

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

No. XXXVIII.

APPOINTMENT *of a* SUM *of* MONEY *to a* SON *and* SURRENDER *of* DONEE'S LIFE INTEREST *so as to* ENABLE *the* MONEY *to be* RAISED *at once.*

APPOINTMENT AND SURRENDER OF LIFE INTEREST.

TO ALL TO WHOM THESE PRESENTS SHALL COME A. B. of, &c. (*donee of power*), SENDS GREETING (*Recite settlement of trust funds upon trusts for A. B. and C. B. his wife successively for life and then for the children of the marriage as husband and wife or survivor should appoint, and in default of appointment for children equally—death of C. B.*): AND WHEREAS there are several children of the said marriage, of whom E. B. is one, and the said E. B. attained the age of twenty-one years on the —— day of ——, 18—: AND WHEREAS the trust funds now consist of, &c. (*state particulars, including a sum of £—— consolidated stock*): AND WHEREAS the said A. B. is desirous of making such appointment and surrender in favour of the said E. B. as are hereinafter contained: NOW THESE PRESENTS WITNESS that the said A. B. in exercise of the power for this purpose given to him by the said indenture of settlement as aforesaid, and of all other powers (if any) him hereunto enabling, doth hereby appoint that the sum of £1,000, part of the said trust funds, shall go and belong to the said E. B. as part of his share under the said indenture of settlement: AND THESE PRESENTS ALSO WITNESS that the said A. B. hereby surrenders to the said E. B. the life interest of him the said A. B. in the said sum of £1,000 hereinbefore appointed, To the use and intent that the said E. B. shall be entitled to immediate payment of the said sum of £1,000: AND the said A. B. hereby accordingly requests the trustees of the said indenture forthwith to raise the said sum of £1,000 by the sale of a competent part of the said sum of £—— $2\frac{3}{4}$ per Cent. Consolidated Stock and pay the same to the said E. B.

Recital of settlement.

That E. B. is one of the children of marriage.

Particulars of trust funds.

Donee appoints £1,000 to son;

and surrenders life interest to him.

Request to trustees to raise money at once.

IN WITNESS, &c.

APPOINTMENT AND SURRENDER OF LIFE INTEREST.

MEMORANDUM *to be indorsed on the above deed.*

MEMORANDUM that on the —— day of ——, 18—, the trustees of the above-mentioned indenture of settlement sold the sum of £—— $2\frac{3}{4}$ per Cent. Consolidated Stock, and paid the sum of £1,000 produced by such sale to the said E. B. which the said E. B. hereby acknowledges.

(*Signed*) E. B. (*on a receipt stamp*).

No. XXXIX.

RELEASE OF POWER AND SURRENDER OF LIFE INTEREST.

RELEASE *by a* FATHER *of his* POWER *of* APPOINTMENT *over a* TRUST FUND *and* SURRENDER *of his* LIFE INTEREST *so as to become* ENTITLED *in* POSSESSION *to a* SHARE *of the* CAPITAL *as* ADMINISTRATOR *of a* DECEASED CHILD (*f*).

TO ALL TO WHOM THESE PRESENTS SHALL COME A. B. of, &c. (*father and donee of power*), SENDS GREETING

Recitals.

(*Recite settlement of trust funds on A. B. and his wife successively for life and then for children as husband and wife or survivor shall appoint, and in default of appointment for children equally—death of wife without having concurred with A. B. in exercising power—that there had been two children who attained twenty-one, viz., D. B. and E. B.—death of E. B. intestate, grant of letters of administration to A. B., and particulars of trust funds*): AND WHEREAS the said A. B. is desirous of making such release and surrender as are hereinafter contained: NOW THESE PRESENTS WITNESS that the said A. B. hereby releases all the trust funds and property held upon or subject to the trusts of the said indenture of settlement from the power of appointment by the said indenture given to or vested in him as having survived the said C. B. his wife as hereinbefore appears, TO THE INTENT that

Donee of power releases it,

(*f*) See *In re* Radcliffe, (1892) 1 Ch. 227.

RELEASE OF POWER AND SURRENDER OF LIFE INTEREST.

and surrenders his life interest.

the said power may be absolutely extinguished: AND THESE PRESENTS ALSO WITNESS that the said A. B. hereby surrenders unto the said L. M. and N. O. (*the trustees of the settlement*), The life interest of him the said A. B. in the said trust funds and property under the said indenture of settlement: To THE INTENT that the same may be merged in the corpus of the said trust funds and property, and that the said L. M. and N. O. shall henceforth stand possessed of the said trust funds and property, IN TRUST for the said D. B. and the said A. B. as the personal representative of the said E. B., deceased, in equal shares.

IN WITNESS, &c.

No. XL.

NOTICE TO TRUSTEES OF APPOINTMENT.

NOTICE *to* TRUSTEES *of a* SETTLEMENT *of an* APPOINTMENT *of* PART *of the* TRUST FUNDS.

TO——, the trustees of an indenture, dated, &c., and made, &c., (*date and parties*). WE, A. B. of, &c., and C. his wife, hereby give you notice that by a deed dated, &c., we have appointed a share in the trust funds settled by the above-mentioned settlement to our daughter —— in contemplation of her marriage with ——.

As WITNESS our hands this —— day of ——, 18—.

No. XLI.

DIRECTION TO TRUSTEES TO CHANGE INVESTMENTS.

DIRECTION *by* HUSBAND *and* WIFE, *whose consent is made requisite to any change of* INVESTMENT, *to sell out* STOCK *and to advance the produce at interest on* MORTGAGE *of a* REAL ESTATE.

Direction to trustees to sell out stock and advance moneys on mortgage.

WE, A. B. of, &c., and C. his wife, hereby request that under the power for this purpose given to you by an indenture dated the —— day of —— (being the settlement made on our marriage), you will forthwith by the sale of a competent part of the sum of £1,000 2¾ per Cent. Consolidated Stock, now standing in your names as trustees of the said indenture, raise the sum of £—— sterling, and invest the same on mortgage of the farm and lands called the —— farm, situate in the parish of ——, in the county of——, belonging to E. F. of, &c., at interest after the rate of £4 per cent. per annum.

As WITNESS our hands this —— day of ——.

A. B. and C. B. (*husband and wife*).

To L. M. and N. O. (*trustees of settlement*).

No. XLII.

DIRECTION TO TRUSTEES TO ADVANCE PART OF DAUGHTER'S SHARE.

DIRECTION *by* HUSBAND *and* WIFE *to* TRUSTEES *to make immediate payment of part of* DAUGHTER'S *expectant share in the* TRUST MONEYS, *pursuant to a* POWER *of* ADVANCEMENT.

WE, A. B. of, &c., and C. his wife, hereby request that, under the power for this purpose contained in a certain indenture, dated, &c., and made, &c. (being the settlement made on our marriage), you will forthwith advance and pay the sum of £—— out of the trust moneys and property comprised in the said indenture of settlement unto our daughter ——, as an advancement for her benefit in the prospect of the marriage now intended to be shortly solemnized between her and ——.

As WITNESS our hands this —— day of ——.

A. B. and C. B. (*husband and wife*).

To E. F. and G. H. (*trustees*).

No. XLIII.

NOTICE *by* TENANT *for* LIFE *to the* TRUSTEES *and their* SOLICITOR *of* INTENTION *to make a* SALE, EXCHANGE, PARTITION, LEASE, *or* MORTGAGE *of* SETTLED LAND *under the* POWERS *of the* SETTLED LAND ACTS, 1882 *to* 1890 (*a*).

BY TENANT FOR LIFE TO TRUSTEES OF INTENTION TO SELL, ETC.

To C. D. of, &c., E. F. of, &c., and I. K. of, &c., the trustees for the purposes of the Settled Land Acts, 1882 to 1890, of an indenture of settlement dated, &c., and made, &c. (*state date and parties*).

And to L. M., the solicitor of the above-named trustees, whose place of business is, &c. (*state place of business*).

I, A. B. of, &c., being tenant for life under the above-mentioned indenture, hereby give you notice that I intend, by virtue of the power for this purpose vested in me by the said Act, to sell the hereditaments mentioned in the schedule hereto, being part of the hereditaments settled by the said indenture [*or* to sell all or any of the hereditaments settled by the said indenture as and when opportunities arise].

Notice of intention to sell specified lands

or to sell generally.

or,

to make an exchange of the hereditaments mentioned in the schedule hereto, being part of the hereditaments settled by the said indenture, for hereditaments belonging to X. Y. of, &c., situate in the same parish [and to raise the money (if any) which may be required for equality of exchange by a mortgage of all or some of the hereditaments to be received in exchange].

To exchange.

or,

to make a partition of the undivided moiety settled by the said indenture of and in all the hereditaments therein in that

To make partition.

(*a*) See sect. 45 of Act of 1882.

The notice must be sent separately to each of the trustees in a registered letter addressed to his usual or last-known place of abode in the United Kingdom, and also to the solicitor of the trustees if known to the tenant for life, addressed to his place of business.

A notice in general terms is sufficient. See 47 & 48 Vict. c. 18, s. 5.

BY TENANT FOR LIFE TO TRUSTEES OF INTENTION TO SELL, ETC.

behalf mentioned [or of and in the hereditaments mentioned in the schedule hereto, being part of the hereditaments mentioned in the said indenture], with the owner or owners of the other undivided moiety thereof [and to raise the money (if any) which may be required for equality of partition by a mortgage of all or some of the hereditaments to be acquired under such partition].

or,

To make a lease.

to make a lease of the land [or messuage and land] mentioned in the schedule hereto, being part of the hereditaments settled by the said indenture, for a term of —— years for building purposes.

or,

To make leases generally.

to make building, mining, and other leases of the lands and hereditaments settled by the said indenture, or some part or parts thereof as and when opportunities arise.

or,

To make sales, exchanges, and leases generally.

to make sales, exchanges, and leases of the lands and hereditaments settled by the said indenture, or some part or parts thereof, as and when opportunities arise.

As WITNESS my hand this —— day of ——, 18—.

THE SCHEDULE ABOVE REFERRED TO.

No. XLIV.

WAIVER BY TRUSTEES OF STATUTORY NOTICE.

GENERAL WAIVER *of* NOTICE *by* TRUSTEES *under the* SETTLED LAND ACT, 1884.

IN the matter of an indenture of settlement dated, &c., and made, &c. (*state date and parties*).

To A. B. of, &c., the tenant for life in possession of the hereditaments, settled by the above-mentioned indenture.

WE, C. D. of, &c., E. F. of, &c., and G. H. of, &c., the

WAIVER BY TRUSTEES OF STATUTORY NOTICE.

trustees of the above-mentioned indenture for the purposes of the Settled Land Acts, 1882 to 1890, pursuant to the power for this purpose given to us by sect. 5 of the Act of 1884, hereby WAIVE generally the notice by sect. 45 of the Act of 1882 required to be given to us and our solicitor of your intention to make a [sale, exchange, partition or] lease under the powers of that Act.

As WITNESS our hands this —— day of ——, 18—.

No. XLV.

WAIVER *by* TRUSTEES *of* STATUTORY NOTICE *as regards a* PARTICULAR SALE.

WAIVER OF NOTICE OF SALE.

IN the matter, &c.

To A. B., &c.

WE, C. D. of, &c., E. F. of, &c., and G. H. of, &c., the trustees of the above-mentioned indenture of settlement for the purposes of the Settled Land Acts, 1882 to 1890, having been informed that you have entered into a contract with X. Y. of, &c., for the sale to him of the hereditaments mentioned in the schedule hereto for the sum of £——, hereby waive the notice of intention to make that sale which, under sect. 45 of the Act of 1882, you ought to have given or to give to us and our solicitor.

As WITNESS our hands this —— day of ——, 18—.

THE SCHEDULE ABOVE REFERRED TO.

SEPARATION DEEDS.

No. I.

DEED OF SEPARATION.

DEED *of* SEPARATION *between* HUSBAND *and* WIFE. COVENANT *by* HUSBAND *to permit his* WIFE *to live separate;* COVENANTS *by the* TRUSTEES *to indemnify the* HUSBAND *against all obligations to* MAINTAIN *his* WIFE, *or to answer for her* DEBTS (*a*). PROVISION *as to* CUSTODY *of* CHILDREN.

Parties.

THIS INDENTURE, made, &c., BETWEEN A. B. of, &c. (*husband*), of the first part, C. B. of, &c., wife of the said A. B., of the second part, and E. F. of, &c. (*trustee*), of the third part:

Recite that differences have arisen.

WHEREAS unhappy differences having arisen between the said A. B. and C. his wife, and they have consequently agreed to

Separation agreement may be pleaded as a bar to action for restitution of conjugal rights.

(*a*) It is now settled that an agreement by husband and wife to live separate is not illegal as contrary to public policy, and it has been decided in several cases that such an agreement, if founded on sufficient consideration, may be pleaded by way of defence to a suit by either party for the restitution of conjugal rights. Hunt *v.* Hunt, 4 D. F. & J. 221; Marshall *v.* Marshall, 5 P. D. 19; Besant *v.* Wood, 12 C. D. 605. But see the observations of Selborne, L. C., on Hunt *v.* Hunt in Cahill *v.* Cahill, 8 H. L. 420.

Compromise of a matrimonial suit, or of threatened proceedings a sufficient consideration.

The compromise of a matrimonial suit, or the abandonment of threatened proceedings where circumstances exist which would be a ground for such proceedings, is a sufficient consideration for a separate agreement, and for any stipulations as to money or property which either party may, as part of the same arrangement, make in favour of the other. McGregor *v.* McGregor, 21 Q. B. D. 424; Cahill *v.* Cahill, 8 H. L. 429.

Covenant by wife if she has separate property a sufficient consideration for covenant by husband.

If wife has no separate property, trustee must covenant.

If the separation arises from a mere disinclination by the parties to live together, there being no misconduct or alleged misconduct such as would be a ground for legal proceedings, some other consideration must be sought for in order to support the deed. If the wife has separate property, a covenant by her to indemnify the husband against her debts would be a sufficient consideration for a covenant by the husband to make her an allowance, or giving her any other benefit. But if she has no separate property her contract would be inoperative, and the intervention of a trustee to covenant on her behalf would be necessary. Stevens *v.* Olive, 2 B. C. C. 90; Worral *v.* Jacob, 3 Mer. 226; Walrond *v.* Walrond, Johns. 18; *Re* Shakespear, 30 C. D. 169.

DEED OF SEPARATION.

live separate from each other for the future, and to enter into such arrangement as is hereinafter expressed: AND WHEREAS the said A. B. and C. his wife have two children, viz., L. B., now of the age of —— years, and M. B., now of the age of —— years: NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and in consideration of the premises, and of the covenants hereinafter contained on the part of the said C. B. and E. F., the said A. B. hereby covenants with the said C. B., and also by way of separate covenant with the said E. F. as her trustee, that the said C. B. shall and may at all times hereafter, notwithstanding her coverture, live separate and apart from the said A. B., as if she were a *feme sole*, and shall henceforth be free from the control and authority of the said A. B., and shall reside in such place or places and in such manner as she shall think fit, and that the said A. B. will not at any time hereafter require her to live with him, or institute any legal proceedings or take any other steps whatsoever for that purpose, and will not in anywise molest or interfere with the said C. B. in her manner of living or otherwise: AND ALSO that he the said A. B. will, during the joint lives of himself and the said C. B., if they shall so long live separate from each other (*a*), pay to the said E. F. the annual sum of £—— in trust for the said C. B. for her sole and separate use, and so that she shall not have power to dispose thereof in the way of anticipation, the said annual sum to be paid by equal half-yearly payments on the —— day of ——, and the —— day of —— in every year, the first thereof to be made on the —— day of —— next: BUT so nevertheless that the said annual sum shall cease if the marriage between the said A. B. and C. B. shall at any time hereafter be dissolved by a court of competent jurisdiction (*b*): AND ALSO that all property (if any) now

Covenant by husband that his wife may live separate,

that he will not molest her.

To pay an annuity to trustee for wife during joint lives if separation so long continues;

but to cease if marriage is dissolved.

That all pro-

(*a*) There are cases in which it would be prudent on the part of the husband to stipulate that the payment shall continue so long only as the wife remains chaste. In such case the words "and the said C. B. shall continue to lead a chaste life" should be introduced here. Such a condition could not be insisted on in the absence of an express stipulation. See Hart *v.* Hart, 18 C. D. 670; Bradley *v.* Bradley, 7 P. D. 237.

(*b*) In the absence of this proviso, the Court would have power, after a decree for dissolution of the marriage, to relieve the husband either wholly or partially from the covenant under 22 & 23 Vict. c. 61, s. 5. See Worsley *v.* Worsley, L. R. 1 P. & M. 648; Bullock *v.* Bullock, 2 *ib.* 389;

Provision made for wife by separation deed liable to be altered by

DEED OF SEPARATION.

belonging to the said C. B. for any estate or interest, whether in possession, reversion, or otherwise, shall belong to her for her sole and separate use (*c*): AND THAT if the said C. B. shall die in the lifetime of the said A. B., all property (if any) of the said C. B., which but for this covenant would on her death go and belong to the said A. B. in his marital right, or as her administrator, or as tenant by the curtesy, shall go to the person or persons and in the manner to whom and which the same would have gone if the said A. B. had died in her lifetime:

Property of wife shall be for her separate use.

Second witnessing part.

AND THIS INDENTURE ALSO WITNESSETH that, in further pursuance of the said agreement, and in consideration of the premises, the said C. B. and also the said E. F. as her surety hereby jointly and severally covenant with the said A. B. that they, the said C. B. and E. F., will at all times hereafter, during the continuance of the said separation, keep indemnified the said A. B. from and against all debts and liabilities hereafter to be contracted or incurred by the said C. B., whether for her wearing apparel, maintenance, support or otherwise, and from and against all claims and demands for or on account of the same: AND FURTHER, that the said C. B., or any person on her behalf, shall not nor will at any time hereafter commence or prosecute any action or other proceeding for compelling the said A. B. to cohabit with her the said C. B. or to allow her any support, maintenance, or alimony (except the said annual sum hereinbefore covenanted to be paid to her) (*d*), and shall not nor will molest (*e*) the said A. B. in any manner: AND IT IS HEREBY AGREED, that the said A. B. shall have the custody of the said L. B., and the said C. B. shall have the custody of the said M. B., and that the said A. B. shall have access to the said M. B., and the said C. B. shall have access to the said L. B. under such arrangements as shall from time to time be made

Covenants by trustees to indemnify husband against debts of wife;

and that wife shall not bring any action, &c., for compelling him to support her.

Agreement as to custody of children.

Court in the event of a divorce.

Wife's covenant to accept allowance for alimony binding on her, notwithstanding subsequent judicial separation.

Jump *v.* Jump, 8 P. D. 159. If the annual sum is made payable so long only as the wife remains chaste, this proviso will be omitted as unnecessary.

(*c*) The clause in the text will be unnecessary if the marriage took place since the 31st December, 1882.

(*d*) This covenant is binding on the wife, although there may be afterwards a decree for judicial separation on account of the husband's adultery. Gandy *v.* Gandy, 7 P. D. 169. But if there is a dissolution of the marriage, the Court can vary the deed, and order a larger sum for alimony, under 22 & 23 Vict. c. 61, s. 5. Morrall *v.* Morrall, 6 P. D. 98.

(*e*) As to what is molestation, see Fearon *v.* Earl of Aylesford, 12 Q. B. D. 539.

between them for that purpose, or if they shall be unable to agree, then under such arrangements as shall be made by the said E. F. (*f*). DEED OF SEPARATION.

In witness, &c.

No. II.

DEED *of* Separation *between* Husband *and* Wife. (*Another form where there is no trustee.*) DEED OF SEPARATION.

THIS INDENTURE, made the —— day of ——, 18—, between A. B. of, &c. (*husband*), of the one part, and C. B., the wife of the said A. B., of the other part: Whereas unhappy differences have arisen between the said A. B. and C. B., and they have agreed to live separate from each other in future, and to enter into such arrangement as is hereinafter expressed: And whereas by an indenture of settlement dated the —— day of ——, 18—, and made previously to the marriage of the said A. B. and C. B., between, &c. (*state parties*), of which indenture E. F. and G. H. are the present trustees, divers moneys and property (therein called "the husband's trust funds" and "the wife's trust funds" respectively), were settled by and on the part of the said A. B. and C. B. respectively upon trusts under which the income of the husband's trust funds is payable to the said A. B., and the income of the wife's trust funds is payable to the said C. B. for her separate use without power of anticipation during the joint lives of the said A. B. and C. B., and

Parties.

Recite agreement for separation.

Settlement on marriage.

(*f*) The father has at common law the right to the custody of all his children. But by the stat. 2 & 3 Vict. c. 54, power was given to the Court of Chancery to order an infant under the age of seven years to be delivered into the custody of his mother. By another Act (36 Vict. c. 12) the power of the Court is extended to the age of sixteen years, and the Court has also power to make regulations as to the access of the father or other guardian. The Act also provides that no agreement contained in any separation deed made between the father and mother of an infant shall be held invalid by reason only of its providing that the father shall give up the custody or control of the infant to the mother, but with a proviso that no Court shall enforce such agreement if it will not be for the benefit of the infant to give effect thereto. And by another Act (49 & 50 Vict. c. 27, s. 5), the Court may, on the application of the mother, make such order as it may think fit regarding the custody of any infant and the right of access thereto of either parent. As to the principles which guide the Court in cases relating to the custody of infants, see *In re* Taylor, 4 C. D. 157; *Re* Besant, 11 C. D. 508.

Who is entitled to the custody of the children after the separation of the parents.

DEED OF SEPARATION.

the income of all the said trust funds is payable after the decease of either of them to the survivor of them during his or her life: AND WHEREAS there has been no issue of the said marriage: NOW THIS INDENTURE WITNESSETH, that in consideration of the premises, IT IS HEREBY AGREED AND DECLARED between and by the parties hereto as follows:

That there has been no issue.

Witnessing part.

Parties to live separate.

1. THE parties hereto will henceforth live separate from each other, and neither of them will take proceedings against the other for restitution of conjugal rights, or molest, or annoy, or interfere with the other in any manner whatsoever.

Wife to have yearly sum out of income of husband's settled trust funds.

2. THE yearly sum of £——, part of the income of the husband's trust funds settled by the said indenture of settlement, shall be paid to the said C. B. for her sole and separate use, without power of anticipation, during the joint lives of the said A. B. and C. B., if they shall so long live separate from each other [and she shall continue to lead a chaste life] by equal half-yearly payments on the —— day of ——, and the —— day of —— in every year, the first payment to be made on the —— day of —— next: AND the said A. B. hereby assigns the said yearly sum to the said C. B., and directs the trustees of the said indenture of settlement to pay the same to her accordingly.

All property of wife to be for her separate use.

3. ALL property (if any) now belonging to the said C. B., for any estate or interest, whether in possession, reversion, or otherwise, shall belong to her for her separate use (*b*).

Wife to pay her own debts.

4. THE said C. B. will pay her own debts, and keep the said A. B. indemnified therefrom, and if the said C. B. shall make default in observing this covenant, all moneys which shall be paid by the said A. B. in respect of any debt or liability of the said C. B. shall be refunded to him out of the yearly sum payable to the said C. B. under Article 2.

Proceedings in Divorce Court to be stayed and no other proceedings taken for alleged past misconduct.

[5. THE petition presented to the High Court of Justice (Probate Division), by the said ——, shall be withdrawn, and all costs incurred in relation thereto shall be paid by the said A. B.: AND no new or other proceedings shall be taken by either party in the said Court on account of any alleged misconduct of either party before the date of these presents.]

IN WITNESS, &c.

(*b*) This clause will not exclude the husband's right in the event of intestacy. It will be omitted if the marriage has taken place since the 31st December, 1882.

CHARITY DEEDS.

Division of subject.

THE next precedents in this work being of deeds relating to charities, it is proposed in this Dissertation to consider (1) the restrictions imposed by law on dispositions of land for charitable purposes, and (2) the powers and duties of trustees as regards the management of charity property.

Definition of "charity."

Includes all objects recognized as charitable by 43 Eliz. c. 4;

viz., relief of the poor, advancement of learning or the Christian religion, or any other useful public purpose.

Charity, in the legal sense of the term, includes all those objects or purposes which are enumerated as charitable in the preamble of the Statute 43 Eliz. c. 4 (*a*), or included within the purview of that preamble. In accordance with this definition, every disposition is charitable which has for its object (1) the relief of the indigent; (2) the advancement of learning; (3) the maintenance or propagation of the Christian religion, whether according to the doctrines and rites of the Church of England, or those of the Church of Rome, or of any sect or body of Protestant non-conformists (*b*): or (4) the promotion of any other useful public purpose (*c*).

Statutes of Mortmain.

Divers ancient statutes, called the Statutes of Mortmain, prohibited alienations of land to corporate bodies without a licence from the Crown, under pain of

(*a*) This Act is repealed, except as regards the preamble, by the Mortmain and Charitable Uses Act, 1888.

(*b*) By 9 & 10 Vict. c. 59, it is provided that her Majesty's subjects professing the Jewish religion in respect to their schools, places for religious worship, education, and charitable purposes, and the property held therewith, shall be subject to the same laws as her Majesty's Protestant subjects dissenting from the Church of England are subject to. It would appear, therefore, that gifts for the maintenance of Jewish places of worship or the Jewish religion would now be good charitable gifts.

(*c*) A legacy to the Royal Geographical Society is a good charitable bequest. Beaumont *v.* Oliveira, L. R. 6 Eq. 534.

forfeiture. Dispositions of land to unincorporate persons in trust for charitable purposes were not within those statutes, but were subjected to restrictions by the Act 9 Geo. 2, c. 36. The Mortmain and Charitable Uses Act, 1888 (*d*), repeals the Statutes of Mortmain and also the Act 9 Geo. 2, c. 36, and the Acts amending it, but its provisions are substantially the same as those of the repealed Acts. The Act of 1888 is amended as regards dispositions by will and as regards the definition of the word "land," by the Mortmain and Charitable Uses Act, 1891 (*e*), and it is further amended by the Mortmain and Charitable Uses Act Amendment Act, 1892 (*f*).

Geo. 2, c. 36.

Mortmain and Charitable Uses Acts, 1888 and 1891.

Assurance in mortmain prohibited, except with licence from Crown or by authority of statute.

Part I. of the Act of 1888 provides that land shall not be assured to or for the benefit of, or acquired by or on behalf of, any corporation in mortmain otherwise than under the authority of a licence from the Crown or of a statute for the time being in force, and that if any land is assured otherwise than as aforesaid, the same shall be forfeited to the Crown, subject to certain reservations in favour of a mesne lord. And her Majesty is expressly empowered to grant licences to assure and acquire lands in mortmain (*g*).

Conditions under which assurances may be made to charitable uses.

Part II. of the Act of 1888, as amended by the Acts of 1891 and 1892, renders void (subject to certain savings and exceptions) every assurance otherwise than by will of land (*h*), or of personal estate to be laid out in the purchase of land, to or for the benefit of any charitable use, unless made in accordance with the following requirements:

The assurance must be made to take effect in possession for the charitable uses to or for the benefit of which it is made immediately from the making thereof.

The assurance must be without any power of revocation, reservation, condition, or provision for the benefit of the

(*d*) 51 Vict. c. 42.
(*e*) 54 & 55 Vict. c. 73.
(*f*) 55 & 56 Vict. c. 11.
(*g*) Sects. 1, 2, 3.
(*h*) "Land" includes tenements and hereditaments, corporeal or incorporeal, of any tenure, but not money secured on land or other personal estate arising from or connected with land: Act of 1891, s. 3.

assuror or of any person claiming under him. But the assurance, or any instrument forming part of the same transaction, may contain all or any of the following provisions, so, however, that they reserve the same benefits to persons claiming under the assuror as to the assuror himself; namely, (i) the grant or reservation of a peppercorn or other nominal rent; (ii) the grant or reservation of mines or minerals; (iii) the grant or reservation of any easement; (iv) covenants or provisions as to the erection, repair, position, or description of buildings, the formation or repair of streets or roads, drainage or nuisances, and covenants or provisions of the like nature for the use and enjoyment as well of the land comprised in the assurance as of any other adjacent or neighbouring land; (v) a right of entry on nonpayment of any such rent or on breach of any such covenant or provision; (vi) any stipulations of the like nature for the benefit of the assuror or of any person claiming under him.

If the assurance is made in good faith on a sale for full and valuable consideration (*i*), that consideration may consist wholly or partly of a rent, rentcharge, or other annual payment reserved or made payable to the vendor, or any other person, with or without a right of re-entry for nonpayment thereof.

If the assurance is of land, not being land of copyhold or customary tenure, or is of personal estate, not being stock in the public funds, it must be made by deed executed in the presence of at least two witnesses.

If the assurance is of land, or of personal estate, not being stock in the public funds, then, unless it is made in good faith for full and valuable consideration, it must be made at least twelve months before the death of the assuror, including in those twelve months the days of the making of the assurance and of the death.

(*i*) "Full and valuable consideration" includes such a consideration either actually paid upon or before the making of the assurance, or reserved or made payable to the vendor or any other person by way of rent, rent-charge, or other annual payment in perpetuity, or for any term of years or other period, with or without a right of re-entry for nonpayment thereof, or partly paid and partly reserved as aforesaid. Sect. 10.

If the assurance is of stock in the public funds, then, unless it is made in good faith for full and valuable consideration, it must be made by transfer thereof in the public books kept for the transfer of stock at least six months before the death of the assuror, including in those six months the days of the transfer and of the death.

If the assurance is of land, or of personal estate other than stock in the public funds, it must, within six months after the execution thereof, be enrolled in the Central Office of the Supreme Court of Judicature, unless in the case of an assurance of land to or for the benefit of charitable uses those uses are declared by a separate instrument, in which case that separate instrument must be so enrolled within six months after the making of the assurance of the land.

Omission to enrol may be remedied.

Where there has been an omission to enrol a deed within the proper time, the omission may be remedied in certain cases (*k*).

Assurances for a public park, elementary school, or public museum are exempted from Act.

Parts One and Two of the Act do not apply to an assurance by deed of land for the purposes only of a public park (*l*), a schoolhouse (*m*) for an elementary school (*n*), a public museum (*o*), or to an assurance by deed of any land to any local authority for any purpose or purposes for which such authority is empowered by any Act of Parliament to acquire land (*p*); but a deed of assurance for the purposes of a public park, a schoolhouse for an elementary school, or a

(*k*) Sect. 5.

(*l*) "Public park" includes any park, garden, or other land dedicated or to be dedicated to the recreation of the public.

(*m*) "Schoolhouse" includes the teacher's dwelling-house, the playground (if any), and the offices and premises belonging to or required for a school.

(*n*) "Elementary school" means a school or department of a school at which elementary education is the principal part of the education there given, and does not include any school or department of a school at which the ordinary payments in respect of the instruction from each scholar exceed ninepence a week.

(*o*) "Public museum" includes buildings used or to be used for the preservation of a collection of paintings or other works of art, or of objects of natural history, or of mechanical or philosophical inventions, instruments, models, or designs, and dedicated or to be dedicated to the recreation of the public, together with any libraries, reading rooms, laboratories, and other offices and premises used or to be used in connection therewith.

(*p*) Act of 1892.

public museum, unless made in good faith for full and valuable consideration, must be executed not less than twelve months before the death of the assuror, and must be enrolled in the books of the Charity Commissioners within six months after its execution(*q*).

Assurances for certain universities, colleges, and societies exempted.

Part Two of the Act does not apply to (1) an assurance of land, or personal estate to be laid out in the purchase of land, to or in trust for any of the Universities of Oxford, Cambridge, London, Durham, and the Victoria University, or any of the colleges or houses of learning within any of those universities, or to or in trust for any of the Colleges of Eton, Winchester, and Westminster, for the better support and maintenance of the scholars only upon the foundations of those last-mentioned colleges, or to or in trust for the warden, council, and scholars of Keble College; or (2) an assurance to trustees on behalf of any society or body of persons associated together for religious purposes or for the promotion of education, art, literature, science, or other like purposes of land not exceeding two acres for the erection thereon of a building for such purposes, or any of them, or whereon a building used or intended to be used for such purposes, or any of them, has been erected, so that the assurance be made in good faith for full and valuable consideration (*r*).

Exempted assurances may, if thought fit, be enrolled in the Central Office.

The trustees of the instrument containing any assurance to which the exemptions mentioned in the preceding paragraph apply, or declaring the trusts thereof, may, if they think fit, at any time cause the instrument to be enrolled in the Central Office of the Supreme Court of Judicature.

All other statutory exemptions preserved.

All statutory exemptions from the Mortmain Acts which were in force at the time of the passing of the Act of 1888 are saved and kept in force (*s*). The following are examples:—

Gifts and sales to Queen Anne's Bounty.

1. Gifts and sales to the Governors of Queen Anne's Bounty for the augmentation of the maintenance of poor persons, &c., or to the Ecclesiastical Commis-

(*q*) Sect. 6. (*r*) Sect. 7. (*s*) Sect. 8.

sioners for the endowment or augmentation of the income of ministers or perpetual curates of new district churches, or for providing a district church or chapel, may be made by deed enrolled under 27 Hen. 8, or by will (*s*).

Gifts for erecting churches, &c.

2. Gifts may be made by deed enrolled under 27 Hen. 8, c. 16, or by will (such deed or will being executed three calendar months at least before the donor's death), of land not exceeding five acres, or of goods and chattels not exceeding £500 in value, for erecting, rebuilding, repairing, purchasing or providing any church or chapel where the rites of the Church of England are observed, or any house for the residence of the officiating minister of any such church or chapel, or any churchyard or glebe for the same (*t*).

Endowments under Church Building Acts.

3. Endowments under the Church Building Acts (*u*) consisting of or arising out of lands or other hereditaments, or money to be laid out in lands or other hereditaments for the purposes of a site for any church or chapel, churchyard, parsonage house or glebe, or for the use or benefit of any church or chapel, or of the incumbent or minister thereof, or for the repairs thereof, are exempted from the Statutes of Mortmain (*x*), except where the endowment exceeds the annual value of £300 (*y*).

School sites.

4. Under the School Sites Acts (*z*), the Literary and Scientific Institutions Act, 1854 (*a*), the Consecration of Churchyards Act, 1867 (*b*), and the Places of Worship Sites Act, 1873 (*c*), a tenant in fee simple, or in tail, or for life, may convey by way of gift, sale, or exchange, a limited quantity of land (1) as a site for a school for the education of poor persons or for the education or board of masters or mistresses of elementary

(*s*) 43 Geo. 3, c. 107, s. 1; 1 & 2 Vict. c. 20; 6 & 7 Vict. c. 37, s. 22; 7 & 8 Vict. c. 94, s. 11; 28 & 29 Vict. c. 69, s. 4.

(*t*) 43 Geo. 3, c. 108, s. 1; *In re* Vaughan, 33 C. D. 187.

(*u*) 58 Geo. 3, c. 45, ss. 33, 36; 3 Geo. 4, c. 72, s. 2; 1 & 2 Vict. c. 107, s. 6; 19 & 20 Vict. c. 55.

(*x*) It is apprehended that the "Statutes of Mortmain" include here the Act 9 Geo. 2, c. 36.

(*y*) 3 & 4 Vict. c. 60, ss. 2, 3, 17. See also 14 & 15 Vict. c. 97, s. 8.

(*z*) 4 & 5 Vict. c. 38, s. 2; 12 & 13 Vict. c. 49, s. 4; 15 & 16 Vict. c. 49.

(*a*) 17 & 18 Vict. c. 112.

(*b*) 30 & 31 Vict. c. 133, s. 4.

(*c*) 36 & 37 Vict. c. 50, s. 1; 45 & 46 Vict. c. 21.

schools, or the residence of the schoolmaster or schoolmistress, or otherwise for the education of such poor persons in religious and useful knowledge. (2) For any institution for the time being established for the promotion of science, literature, the fine arts, for adult instruction, the diffusion of useful knowledge, the foundation or maintenance of libraries or reading rooms, of public museums and galleries of paintings and other works of art, collections of natural history, mechanical and philosophical inventions, instruments, or designs. (3) For the enlargement of any churchyard. (4) As a site for a church, chapel, meeting house, or other place of divine worship, or for the residence of a minister officiating in such place of divine worship, or in any place of worship within one mile of such site, or for a burial place, subject, however, to certain conditions prescribed by the Acts as regards conveyances by a tenant for life.

Literary and scientific institutions.

Enlargement of churchyards.

Places of religious worship.

As regards conveyances under the School Sites Acts it is expressly provided that only one witness to the execution of the deed is necessary, and that the deed is to be valid, although the owner or grantor may die within twelve calendar months (*d*). And the Places of Worship Sites Act and the Literary and Scientific Institutions Act contain similar provisions (*e*). Neither of these Acts, however, dispenses with the necessity for enrolment, and it is therefore proper to enrol the deed of conveyance, except in cases coming within section 6 of the Act of 1888. Consequently a conveyance by way of *gift* to a school board or to trustees for a public elementary school should be enrolled (*f*).

Under School Sites and other Acts enrolment is not dispensed with.

5. Under the Recreation Grounds Act, 1859, any land may be lawfully conveyed by deed to trustees to be held by them as open public grounds for the resort and recreation of adults and as playgrounds for children and youths, or either of such purposes; and

Recreation grounds.

(*d*) 4 & 5 Vict. c. 38, s. 10; 7 & 8 Vict. c. 37, s. 3.

(*e*) 36 & 37 Vict. c. 50, s. 4; 17 & 18 Vict. c. 112, ss. 13, 14.

(*f*) Davidson, vol. 5, p. 1028. See also 36 & 37 Vict. c. 86, s. 13, sub-s. 3.

it is expressly provided that the deed need not be enrolled, and that it will be valid, although the donor may die within twelve calendar months (*g*). And under the same Act personal property not exceeding £1,000 may be bequeathed to defray the expense of purchasing, &c. ground for the aforesaid purposes (*h*).

In cases not coming within statutory exemption, conveyances on sale to a charity must be enrolled, from whatever source purchase-money is derived.

In cases not coming within any statutory exemption, a conveyance of land by way of sale to trustees for a charitable purpose must be enrolled, from whatever source the purchase-money is derived, *e. g.*, whether it has arisen from the sale of charity land sold to a railway company (*i*), or otherwise from the proceeds of some endowment, or is provided by voluntary contributions at the time, or is raised by public rates (*k*).

It is apprehended, therefore, that land bought by guardians of the poor for a workhouse (*l*), or by a local authority for a cemetery, or a hospital, the purchase-money being paid out of the rates, is a purchase upon a charitable trust, and the deed of assurance in such a case, if made before the 20th June, 1892, ought to have been enrolled; but if made since that date, comes within the exception of the Act of 1892, and need not be enrolled.

Effect of death of donor of purchase-money within twelve months.

Where the purchase-money of land is provided by the voluntary gift of one person, the conveyance being made by his direction to trustees for a charitable purpose, the death of that person within twelve calendar months from the date of the deed invalidates the charitable trust, and the land (according to *Price* v. *Hathaway*) (*m*) belongs in equity to his heir. For the same reason, it would appear that if the purchase-money is provided by the contributions of several persons, the death of any one of such persons within

(*g*) 22 Vict. c. 27, ss. 1, 2. It will be observed, that the necessity for two witnesses is not expressly dispensed with.

(*h*) Sect. 7.

(*i*) *Ex parte* Christ's Hospital, 12 W. R. 669.

(*k*) Att.-Gen. *v.* Eastlake, 11 Hare, 205; *Re* St. Botolph's Estates, 35 Ch. D. 142. The doctrine to the contrary in Att.-Gen. *v.* Heelis, 2 S. & S. 67, is overruled.

(*l*) See Webster *v.* Southey, 36 C. D. 9. Barnaby *v.* Bardsley, 28 L. J. Ex. 326, is apparently overruled.

(*m*) 6 Mad. 304; Att.-Gen. *v.* Gardner, 2 De G. & S. 116.

the twelve calendar months would invalidate the trust *pro tanto* (*n*).

Adaptation of Act to registered land.

As regards registered land, the Act provides that any assurance required to be made by deed may be made by a registered disposition under the Land Transfer Act, 1875, or any Act amending the same, and any assurance so made need not be executed in the presence of two witnesses, nor be enrolled in the Central Office (*o*).

Trustees under a void charity deed may acquire title by statute of limitations.

A deed which does not comply with the requirements of the Act of 1888 is absolutely void, not only as to the creation of the trusts, but also as to the conveyance of the legal estate. If, therefore, the trustees of the charity enter into possession and remain in possession for twelve years they acquire a good title under the Statute of Limitations (*p*).

The powers and duties of trustees as regards the management of charity property.

The powers and duties of trustees as regards the management of charity property are now regulated, in the case of endowed charities (with certain exceptions), by the Acts of Parliament passed in the present reign, known as the Charitable Trusts Acts, 1853 to 1887.

Charitable Trusts Acts.

Constitution of Board of Charity Commissioners.

By those Acts a board is constituted called "The Charity Commissioners for England and Wales" (*q*), which board is empowered to give advice and directions in all matters relating to the management or administration of any charity, and the trustees acting on such advice or directions will be deemed to have acted in accordance with the trust (*r*).

Board to give advice and directions to trustees.

May authorize leases, mortgages, and sales.

The board may authorize leases for building and mining purposes, repairs and improvements, the raising

(*n*) See Girdlestone *v.* Creed, 10 Hare, 480; Hawkins *v.* Allen, L. R. 10 Eq. 246.

(*o*) Sect. 9.

(*p*) Churcher *v.* Martin, 42 C. D. 312.

(*q*) 16 & 17 Vict. c. 137, s. 1.

(*r*) Sect. 16.

of money by mortgage for any such purpose, and sales and exchanges of charity land (*s*).

Official trustee.

The secretary is constituted a corporation sole by the title of "The official trustee of charity lands," and the board has power, under certain specified circumstances, and also whenever it appears to them desirable, to make an order vesting any charity lands in the official trustee. The secretary and other persons appointed by the Lord Chancellor are constituted a corporation by the title of "The official trustees of charitable funds" (*t*).

Restriction on sales, mortgages, and leases by trustees.

No sale, mortgage, or charge of the charity estate, and no lease in reversion after more than three years of any existing term, or for life, or in consideration wholly or in part of any fine, or for any term of years exceeding twenty-one years, can be granted by the trustees of any charity otherwise than with the express authority of Parliament or of a Court or judge of competent jurisdiction, or according to a scheme legally established, or with the approval of the board. A lease granted without such authority is absolutely void (*u*).

Appointment of new trustees.

The board may make orders for the appointment or removal of trustees of a charity, or for the removal of any schoolmaster or schoolmistress or other officer thereof, or for or relating to the assurance, transfer, payment, or vesting of any real or personal estate, or entitling the official trustees of charitable funds or any other trustees to call for the transfer of any stock, or for the establishment of any scheme for the administration of the charity. But no such order is to be made where the gross annual income of the charity amounts to £50 or upwards, except upon the written application of the trustees of the charity or a majority of them, or, in the case of incorporated trustees, under their common seal (*x*).

Accounts.

The trustees of any charity are bound to render certain accounts to the board annually (*y*).

(*s*) Sects. 21, 24.
(*t*) 18 & 19 Vict. c. 124, ss. 15—18.
(*u*) Bishop of Bangor *v.* Parry, (1891) 2 Q. D. 277.
(*x*) 23 & 24 Vict. c. 136, ss. 2—9.
(*y*) 18 & 19 Vict. c. 126, s. 44.

Where lands are vested in the official trustee, the acting trustees of the charity, or the majority of them (such majority not being less than three), may grant such leases of the lands as they might have granted if the same were legally vested in themselves (*z*). And where the trustees acting in the administration of any charity have power to determine on any sale, exchange, partition, mortgage, or lease, or other disposition of any property, a majority of those trustees who are present at a meeting duly constituted, and vote on the question, may execute and do all assurances and things for carrying into effect such sale, &c., and such assurances, &c., have the same effect as if they were executed by all the trustees and the official trustee of charity lands (*a*).

Majority of acting trustees may grant leases of land vested in official trustee.

Majority of trustees may execute assurances.

The Charitable Trusts Acts do not extend to (1) the Universities of Oxford, Cambridge, or Durham, or to any cathedral or building registered as a place of meeting for religious worship, and *bonâ fide* used as such; (2) The Commissioners of Queen Anne's Bounty, the British Museum, or to any friendly or benefit society, or savings bank, or any institution, &c. for religious or charitable purposes, wholly maintained by voluntary contributions; and where any charity is maintained partly by voluntary contributions and partly by means of income arising from any endowment, the Act applies only to the income from endowment, and no donation or bequest to or in trust for any such charity as last aforesaid, of which no special application is directed, and which may be legally applied by the governing or managing body as income in aid of voluntary subscriptions, is subject to the jurisdiction of the board; and no portion of any such donation, &c., or of any voluntary subscription which is set apart and invested by the governing body for the purpose of some defined and specific object or purpose in pursuance of any rule or resolution made or adopted by the governing body, is subject to the juris-

Exemptions from Act.

(*z*) 18 & 19 Vict. c. 124, s. 16. (*a*) 32 & 33 Vict. c. 110, s. 12.

diction of the board. The funds of missionary societies are also exempted (*b*).

Endowment, what is.

The term "endowment," as used above, means an endowment for some specific purpose or trust, and does not include an investment arising from voluntary contributions not appropriated by the donor to any specific purpose. Thus, if money given to a charitable institution for its general purposes is laid out in the purchase of land, the land may be afterwards sold again without the consent of the Charity Commissioners (*c*).

Exempted charities may on application be brought within Act.

The trustees of any exempted charity may apply to the board to have the Charitable Trusts Acts, or any provisions thereof specified in the application, extended to that charity (*d*).

In cases not within Act, jurisdiction remains with Chancery Division.

The powers of the trustees of any charity not within the above Acts depend on the terms of the charter or trust deed by which it is founded, and if these are defective resort must be had to the Chancery Division of the Court to supply the defect.

(*b*) 16 & 17 Vict. c. 137, s. 62.

(*c*) Governors of Society for Relief of Poor Women, &c. *v.* Sutton, 27 Beav. 654; Royal Society *v.* Thompson, 17 C. D. 407; Finnis to Forbes, 24 C. D. 591.

(*d*) 32 & 33 Vict. c. 110, s. 14.

No. I.

DEED *of* GIFT *of* COTTAGES *to* TRUSTEES *to be used as* ALMSHOUSES (*a*).

GIFT OF COTTAGES FOR ALMSHOUSES.

KNOW ALL MEN BY THESE PRESENTS, that A. B. of P—— Court, in the county of ——, Esq., doth by this deed hereby freely and voluntarily convey (*b*) unto the Rev. C. D., the present rector of the parish of P——, in the county of ——, and E. F. and G. H., both of P—— aforesaid, farmers (the present churchwardens of the said parish), ALL those six cottages, tenements, or almshouses, now being erected by the said A. B. on land belonging to him, situate in the parish of P—— aforesaid, and adjoining the turnpike road leading from —— to ——, and the garden ground or land belonging and adjoining to the said cottages, all of which premises contain together ——, or thereabouts, and the same are delineated in the map or plan drawn in the margin of these presents, and are therein coloured pink: TO HOLD the same unto and to the use of the said A. B., C. D., E. F., and G. H., in fee simple, IN trust to permit the same to be for ever hereafter occupied by aged or infirm persons, inhabitants of the said parish of P——, according and subject to the rules, regulations, and provisions for the administration and management of the charity intended to be hereby estab-

Donor grants to rector and churchwardens

cottages.

Habendum to rector and churchwardens to use of donor, and rector and churchwardens in fee, in trust to permit same to

(*a*) This deed must be executed in the presence of two witnesses, and enrolled in the Central Office within six months. If the donor dies within twelve months the deed will be void, and it is therefore suggested that he should make a codicil to his will, confirming the deed in the event of his death within this period. For the form of such a devise, see Precedents of Wills, No. 642, *infra*.

(*b*) Where it is wished, in order to save the expense of the conveyance, which would otherwise be necessary on every change of trustees, to vest the legal estate in charity lands in the official trustee, it is not proper for the founder of the charity to convey it in the first instance to the official trustee—he should convey it to the acting trustees appointed by himself, and when thus clothed with the charitable trust it may be vested in the official trustee by an order of the Board made on the application of the trustees.

Course to be pursued to vest lands in official trustee.

GIFT OF COTTAGES FOR ALMSHOUSES.

lished, which are hereinafter expressed and contained (that is to say) :—

be used as almshouses, subject to following regulations:—

Charity to be under management of the P—— Court trustee, and the rector and churchwardens for the time being.

1. The charity shall be under the sole management and control of the following persons as trustees: (that is to say), the P—— Court trustee for the time being, as hereinafter defined, the rector for the time being of the parish of P——, and the churchwardens for the time being of the said parish.

Definition of P—— Court trustee.

2. The owner for the time being of the capital messuage called P—— Court, or other the principal messuage which shall for the time being be standing on the lands and hereditaments now known as the P—— Court estate, or on any lands and hereditaments which may hereafter be added to and form part of the P—— Court estate, shall be the P—— Court trustee, provided that such owner shall be of full age, and shall be residing at such capital or principal messuage as aforesaid, or elsewhere in the parish of P——, or within —— miles of such parish. If the said capital or principal messuage shall at any time be settled, the person for the time entitled to the first estate of freehold therein shall be deemed the owner thereof. If there shall at any time be two or more joint or co-owners, such one of them as shall be of full age and residing as aforesaid shall be the P—— Court trustee; but if two or more of such joint or co-owners shall be of full age and residing as aforesaid, they shall select one of their number to be the P—— Court trustee. A woman, if unmarried, may be a trustee; but if a woman who would otherwise be the P—— Court trustee shall marry, then her husband, if of full age and residing as aforesaid, shall be the trustee during such time as she, if unmarried, would be the trustee. If the person who would otherwise be the P—— Court trustee shall be a minor, his or her guardian, if residing as aforesaid, and willing to act, or such one of his or her guardians residing as aforesaid as shall be willing to act, shall be the P—— Court trustee during such minority, unless such minor shall be a married woman, in which case her husband, if of full age and residing as aforesaid, shall be the P—— Court trustee.

If no P—— Court trustee, rector and churchwardens to be sole trustees.

3. If it shall at any time happen that there shall be no duly qualified P—— Court trustee, or such trustee being duly qualified shall be unable or unwilling to act, the rector and churchwardens for the time being of the said parish shall for such time act as the sole trustees of the charity.

GIFT OF COTTAGES FOR ALMSHOUSES.

4. In accordance with the aforesaid provisions, the above-named A. B., C. D., E. F., and G. H., are hereby constituted the first trustees of the charity, and the said C. D., E. F., and G. H., shall respectively cease to be trustees, if and when they shall respectively cease to be rector and churchwardens of the said parish.

Appointment of first trustees.

Legal estate may be transferred to official trustee of charity lands.

5. Whenever any necessity arises for transferring the legal estate in the said premises, the trustees shall, and they may, if they think fit, at any other time, apply to the Charity Commissioners for an order vesting the estate in the official trustee of charity lands.

Who are to be inmates.

6. The trustees shall from time to time elect to be inmates of the cottages such aged or infirm persons, inhabitants of the said parish of P——, as they the trustees shall consider most deserving objects of the charity. Such inmates may be of either sex, and may be either married or single. No able-bodied person shall be elected, and no inmate shall, without the express permission of the trustees, be allowed to have any person, whether a member of his or her family, or any other person, to live with him or her in the almshouses: it being the intention of the founder of the charity to provide a home for aged or infirm persons who would otherwise be probably compelled to end their days in the union workhouse.

No person to be ineligible on account of religious opinions.

7. No person shall be ineligible or considered a less deserving object of the charity by reason or on account of his or her religious opinions.

Inmates to have use of gardens.

8. The inmates of the cottages shall be permitted to use the gardens attached to the cottages, subject to such rules and regulations as the trustees may from time to time prescribe.

Small rent may be imposed on inmates for certain purposes.

9. The trustees may impose on the inmates of the cottages such small rent as they the trustees may from time to time think necessary or proper for the purpose of paying for the necessary repairs of the cottages, or for insuring the same against loss or damage by fire, or for defraying any expenses which may be incurred in or about the management and administration of the charity, or as evidence of the title of the trustees, but no rent or other payment beyond what shall be necessary for the aforesaid purposes shall be required from the inmates.

Trustees may make rules, and may expel

10. The trustees may make rules as to the conduct of the inmates, and may at any time expel or remove any inmate

GIFT OF COTTAGES FOR ALMSHOUSES.

either for misconduct, or because, in the opinion of the trustees, he or she is no longer a proper object of the charity, or for any other reason, by giving to him or her one calendar month's notice in that behalf.

any inmate by giving a month's notice.

Business to be conducted at meetings.

11. The election of inmates of the cottages, and all other business of the charity, shall take place and be transacted at ordinary or special meetings of the trustees.

An ordinary meeting to be held each year.

12. There shall be one ordinary meeting of the trustees held in each year for transacting the general business of the charity, and such ordinary meeting shall be held on some convenient day to be appointed by the trustees themselves.

Special meetings may be called by any two trustees by notice.

13. Any two of the trustees may call a special meeting by delivering at the respective dwelling-houses of the other trustees, or sending to them respectively through the post, twenty-one days' previous notice of such meeting, stating the time and place of holding the same, and the objects or purposes for which it is to be held. A notice sent through the post, and addressed to a trustee at his dwelling-house, shall be effective although such trustee may at the time be absent from home, and may never actually receive such notice.

Place of meetings.

14. All meetings of the trustees shall be held either at P—— Court aforesaid, or at the rectory, or at such other convenient place within the parish of P——, as shall be agreed on by the trustees, or named in the notice convening such meeting.

Three trustees to be a quorum.

15. Three trustees present at a meeting shall form a quorum.

Chairman of meetings.

16. At every meeting of the trustees the P—— Court trustee (if present), or if the P—— Court trustee be absent, then the rector of the parish, shall be the chairman of the meeting.

Voting.

17. The election of the inmates of the cottages, and all other business brought before any meeting, shall be decided by a majority of votes of the trustees present; and in case of an equality of votes, the chairman of the meeting shall have a casting vote.

Minutes to be kept.

18. Minutes of the proceedings of every meeting of the trustees shall be entered in a book to be kept for that purpose and signed by the chairman of such meeting, or of the following meeting, when they are read over, and shall, when so entered and signed, be conclusive evidence of the business and other matters transacted at such meeting.

Trustees may make bye-laws.

19. The trustees may from time to time make such rules and

bye-laws for and in relation to the conduct of the business of the charity not inconsistent with the main objects of the foundation as they may think fit.

GIFT OF COTTAGES FOR ALMSHOUSES.

In witness, &c.

No. II.

DEED *creating a* Money Endowment *for the* Almshouses *established by the last* Precedent.

DEED CREATING MONEY ENDOWMENT FOR ALMSHOUSES.

TO ALL TO WHOM THESE PRESENTS SHALL COME, A. B. of P—— Court, in the county of ——, Esq., the Rev. C. D. (the present rector of the parish of P——, in the said county), and E. F. and G. H., both of P—— aforesaid, farmers (the present churchwardens of the said parish), SEND GREETING: Whereas the said A. B., by a deed-poll dated the —— day of ——, 18—, duly executed and enrolled in the Central Office of the Supreme Court of Judicature, conveyed all those six cottages, &c. (*describing them*), unto and to the use of the said A. B., C. D., E. F., and G. H., in fee simple: In trust to permit the same to be for ever thereafter occupied by aged and infirm inhabitants of the said parish of P——, according and subject to the rules, regulations, and provisions for the administration and management of the charity intended to be thereby established, which were thereinafter expressed and contained: And whereas the said A. B. has lately caused the sum of £—— $2\frac{3}{4}$ per Cent. Consolidated Stock to be transferred into the names of the said A. B., C. D., E. F., and G. H., in the books of the Governor and Company of the Bank of England, for the purposes hereinafter expressed: NOW THESE PRESENTS WITNESS, and it is hereby declared, and, in particular, the said A. B. doth hereby direct, that the said sum of £—— $2\frac{3}{4}$ per Cent. Consolidated Stock (hereinafter called "the said

Recital of deed of grant of almshouses to trustees.

Transfer by donor of stock into names of trustees.

Witnessing part.

Declaration of trust of stock.

DEED CREATING MONEY ENDOWMENT FOR ALMSHOUSES.

trust stock") shall be for ever hereafter held in trust for the following purposes (that is to say):—

Trustees of almshouses to be trustees of stock.

1. The trustees for the time being of the charity established by the said recited deed, dated —— day of ——, 18—, shall always be the trustees for the administration of the charity established by these presents.

Dividends to be applied for repairs and insurance of almshouses.

2. The said trustees shall for ever hereafter receive the dividends of the trust stock, and shall with and out of the said dividends, in the first place, keep the almshouses established by the said recited deed insured against loss or damage by fire, in such an amount as they shall think sufficient; and shall in the next place, with and out of the said dividends, keep the said almshouses in good and substantial repair: And the said trustees shall lay out all moneys (if any) which may be received from time to time under or by virtue of any such insurance as aforesaid, in or towards the rebuilding and reinstating the said almshouses, or such part thereof as shall or may be burnt down or damaged by fire.

Trustees may apply any surplus in their hands above a certain sum for benefit of inmates.

3. If and whenever the said trustees shall have in their hands a sum of money arising from the dividends of the said trust stock not required for the purposes aforesaid, exceeding in amount the sum of £——, the said trustees may, if they think fit, apply the whole or any part of the surplus over and above the said sum of £—— for the benefit of the inmates for the time being of the said almshouses, or any of such inmates, in such manner as they may think proper.

Stock may be transferred to official trustees.

4. Whenever any necessity arises for transferring the said trust stock, the trustees for the time being shall, and they may, if they think fit, at any other time, apply to the Charity Commissioners for England and Wales for an order directing the transfer thereof to the Official Trustees of Charitable Funds, in trust for the said charity, and shall, upon such order being obtained, transfer the said stock accordingly.

In witness, &c.

No. III.

CONVEYANCE *of a piece of* GROUND *to the* GOVERNORS *of* QUEEN ANNE'S BOUNTY *as a* SITE *for a* PARSONAGE HOUSE (*a*).

CONVEYANCE OF PIECE OF GROUND AS A SITE FOR A PARSONAGE.

THIS INDENTURE, made, &c., BETWEEN A. B. of, &c. (*grantor*), of the one part, and the Governors of the Bounty of Queen Anne for the augmentation of the maintenance of the poor clergy (*grantees*) of the other part, WITNESSETH, that the said A. B. doth hereby freely and voluntarily, and without any valuable consideration, convey unto the said Governors and their successors, ALL THAT piece of ground (*here describe the parcels*), TO HOLD the same unto and to the use of the said Governors and their successors, TO THE INTENT that a house may be built upon a part of the said piece of ground, and be used and appropriated as and for a house of residence, and that the remainder of the said piece of ground may be appropriated as and for a garden or glebe, for the use of the minister or incumbent for the time being of —— church at ——, and generally to the intent that the said piece of ground and premises shall henceforth be devoted to the augmentation of the maintenance of the said minister or incumbent, according to the true intent and meaning of the several Acts of Parliament in that case made and provided.

IN WITNESS, &c.

Parties.

Conveyance of land to Governors of Queen Anne's Bounty.

That a parsonage house may be built and be used as a residence for incumbent.

No. IV.

CONVEYANCE *of* LAND *to the* ECCLESIASTICAL COMMISSIONERS *for the* ENDOWMENT *of the* INCOME *of a* PERPETUAL CURATE *of a new* DISTRICT CHURCH (*b*).

CONVEYANCE OF LAND TO ECCLESIASTICAL COMMISSIONERS.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c., of the one part, and the Ecclesiastical Com-

Parties.

(*a*) This deed must be enrolled. 2 & 3 Anne, c. 20, s. 4.

(*b*) Lands or any other property may be granted either by deed enrolled or by will, and may either be voluntarily given or sold for a valuable

Lands may be given for

CONVEYANCE OF LAND TO ECCLESIASTICAL COMMISSIONERS.

missioners for England, of the other part, WITNESSETH, that under the authority of Acts passed in the sessions of Parliament held in the sixth and seventh, and seventh and eighth years of the reign of her present Majesty, intituled respectively, "An Act to make better Provision for the Spiritual Care of Populous Parishes," and "An Act to explain and amend an Act to make better Provision for the Spiritual Care of Populous Parishes," the said A. B. doth by these presents freely and voluntarily, and without any valuable consideration, convey to the said Ecclesiastical Commissioners, ALL, &c. (*describe the premises to be conveyed*), TO HOLD the same to the said Commissioners and their successors for the purpose of, &c. (*describe the particular purpose, being some purpose within the provisions of the said Acts*).

Grant of land to Ecclesiastical Commissioners.

IN WITNESS, &c.

No. V.

CONVEYANCE *to* GUARDIANS *of the* POOR (*c*).

CONVEYANCE TO GUARDIANS.

THIS DEED, made the —— day of ——, 18—, by virtue of the Union and Parish Property Act, 1835, under the order and with the approbation of the Local Government Board, testified by their seal being hereunto affixed, WITNESSETH, that in consideration of the sum of £——, paid by the guardians of the poor of the —— Union, in the county of ——, to A. B. of, &c. (*vendor*) (the receipt whereof the said A. B. hereby acknowledges), the said A. B., as beneficial owner, hereby conveys unto the said guardians, ALL, &c. (*parcels*): TO HOLD the same unto and to the use of the said guardians in fee simple.

IN WITNESS, &c.

building or endowment of churches under certain statutes.

consideration to the Ecclesiastical Commissioners for the endowment or augmentation of the income of ministers or perpetual curates of new district churches, or for providing any church or chapel for the purpose of the Act. 6 & 7 Vict. c. 37, s. 22; 7 & 8 Vict. c. 94, s. 11.

(*c*) See 5 & 6 Will. 4, c. 69, s. 6; 30 & 31 Vict. c. 106, s. 30; 34 & 35 Vict. c. 70, s. 2. This deed need not be enrolled. See 55 & 56 Vict. c. 11.

No. VI.

CONVEYANCE *of* LAND PURCHASED *as a* SITE *for a* HOSPITAL (*a*).

OF LAND FOR A HOSPITAL.

THIS INDENTURE, made the —— day of ——, 18—, BETWEEN A. B. of, &c., C. D. of, &c., E. F. of, &c., and G. H. of, &c. (*purchasers and donors*), of the first part, and the said A. B., C. D., E. F., and G. H., L. M. of, &c., and N. O. of, &c. (*trustees*), of the second part: WHEREAS the parties hereto of the first part have lately purchased the piece of land hereinafter described from X. Y. of, &c., for the sum of £——, and the same has been conveyed to them in fee simple by an indenture bearing even date with these presents: AND WHEREAS the parties hereto of the second part are the members of a committee appointed at a public meeting held at ——, on the —— day of —— last, for the purpose of taking steps to establish a hospital at —— for the treatment of poor persons in sickness: AND WHEREAS the parties hereto of the first part have agreed to give the said piece of land as a site for the said intended hospital, and to convey the same to the parties hereto of the second part in fee simple, upon the trusts and with and subject to the powers and provisions hereinafter expressed and contained of and concerning the same: AND WHEREAS the parties hereto of the second part intend to erect on the said piece of land a suitable building for the said hospital by means of money collected and to be collected for that purpose.

Parties.

Recital of purchase of land by parties of first part;

that parties of second part are members of a committee appointed to establish hospital.

Agreement by parties of first part to give land for hospital;

that parties of second part intend to erect buildings by means of money collected.

NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement in this behalf, and in consideration of the premises, the parties hereto of the first part hereby convey unto the parties hereto of the second part, ALL that piece of land, &c. (*describing it*), TO HOLD the same unto and to the use of the parties hereto of the second part (hereinafter called

Witnessing part.

Parties of first part convey land to parties of second part in trust to permit same to be used for hospital.

(*a*) In this case the parties of the first part are supposed to have found the purchase-money between them, and they must therefore be considered the donors of the site, so that the death of any of them within twelve months would invalidate the charitable trust *pro tanto*. They must each execute in the presence of two witnesses, and the deed must be enrolled. See p. 436.

OF LAND FOR A HOSPITAL.

"the trustees"), in fee simple, IN TRUST to permit the same, and the building or buildings to be erected thereon, to be used as a hospital for, &c. (*state objects of hospital*), subject to such rules and regulations as shall for the time being be in force for the management and government thereof, and subject also to the following provisions (namely):—

Trustees to frame rules and regulations. To be submitted to general meeting of subscribers.

1. THE parties hereto of the second part, or the majority of them, shall, as soon as conveniently can be, frame, or cause to be framed, rules and regulations for the management and government of the said hospital and the funds and property thereof, and shall submit the same to a general meeting of the subscribers of £—— and upwards to the funds of the hospital, to be convened by an advertisement published at least fourteen days before the day of meeting, in the —— newspaper, or some other newspaper circulating in the county of ——: AND the said rules and regulations, if adopted by a majority of the subscribers present and voting thereat, or at an adjourned meeting, shall thenceforth come into force and have effect.

Matters to be provided for by rules and regulations.

2. THE said rules and regulations shall include rules for the following (among other) purposes, namely, (1) rules providing for the holding of general meetings of the governors, and in particular an annual general meeting to be held some time in the month of February in every year, and defining what amount of donation or annual subscription shall qualify the donor or subscriber as a governor entitled to be present and vote at general meetings; (2) rules providing for the appointment of a committee of management to consist partly of *ex officio* members and partly of members to be elected annually at the annual general meeting of governors; (3) rules regulating the proceedings at general meetings, and also at meetings of the committee of management; (4) rules providing for the investment of moneys not required for the immediate purposes of the hospital, and for the keeping and auditing of accounts; and (5) a rule providing in what manner and by what authority new rules may be made or existing rules be rescinded or altered.

Trustees to be committee of management until appointment of committee under rules.

3. UNTIL a committee of management shall be appointed under the said rules and regulations, the parties hereto of the second part shall be the committee of management, with full power to erect and complete, fit up, and furnish the necessary building or buildings, and to make all such arrangements in relation to the establishment of the said hospital as they shall think fit.

OF LAND FOR A HOSPITAL.

4. IT shall be lawful for the trustees, if and whenever they shall be directed so to do by a resolution of the committee of management, or of a general meeting of governors, to sell the said land and the buildings thereon, or any part thereof, or to exchange the same for other land or buildings, with liberty to give or receive money for equality of exchange, or to raise any sum or sums of money by mortgage of the said land and buildings or any part thereof, and to pay the moneys to arise from any such sale, or to be received for equality of exchange, or to be raised by any such mortgage as aforesaid, to such person or persons as the committee shall direct, to the intent that the same may be added to the general funds of the hospital, and be applicable, at the discretion of the committee, either in the purchase of other land or buildings, or in the erection of new or additional buildings, or in repairs, alterations, or improvements, or for any other charitable purpose for which the general funds of the hospital shall be applicable under the existing rules and regulations thereof.

Power to trustees by direction of committee to sell, exchange and mortgage.

How sale moneys, &c., to be applied.

5. IT shall be lawful for the trustees, if and whenever they shall be directed so to do by a resolution of the committee of management, or of a general meeting of governors, to let or demise the said lands and buildings, or any part thereof which may not for the time being be required for the purposes of the hospital, to any person or persons either from year to year or for any term of years, at such rent, and subject to such covenants and conditions, as they may think fit, and the rent to be reserved upon any such lease shall be part of the general funds of the hospital, and be applicable accordingly.

Power to trustees by direction of committee to lease.

6. THE receipt of the trustees for any money payable upon any sale, exchange or mortgage, or for any rent reserved upon any such lease as aforesaid, shall be a sufficient discharge for the same to any purchaser, mortgagee, lessee, or other person to whom the same shall be given, and such purchaser, mortgagee, lessee or other person shall not be bound or concerned to see to the application of the said money or rent, or be liable for the misapplication or non-application thereof.

Receipts of trustees.

7. ANY present or future trustee of these presents shall be at liberty to resign the trusteeship at any time by signing a note addressed to the committee expressing his wish to resign, and the committee may at any time remove any trustee from the trusteeship for any reason which may appear to them sufficient.

Any trustee may resign.

OF LAND FOR A HOSPITAL.

Power to appoint new trustees.

8. WHENEVER there shall be a vacancy in the trusteeship caused by death, resignation or removal, or any other cause, the committee of management may by a resolution appoint one or more trustee or trustees to supply the vacancy, and upon any such appointment the number of trustees may be augmented or reduced, provided that the number be never more than five or less than three. Upon every such appointment, the trust property shall be conveyed so as to become vested in the trustees for the time being; and every new trustee appointed as aforesaid shall and may have and exercise all the powers by these presents vested in the trustees in the like manner as if he had been originally appointed hereby.

Resolution of committee or of general meeting, how to be evidenced.

9. WHENEVER by these presents, or by any such rules or regulations as aforesaid, a resolution of the committee, or of a general meeting of governors, is required for any purpose, a copy of such resolution purporting to be signed by the chairman of the committee, or the chairman of the general meeting by which such resolution shall have been passed, shall be deemed to be sufficient evidence thereof, so far as regards any purchaser, mortgagee, lessee, or other person deriving title to the hospital property or any part thereof under any sale, purchase, mortgage lease, or other disposition purporting to be made under the authority of these presents.

IN WITNESS, &c.

No. VII.

OF LAND FOR COTTAGE HOSPITAL.

CONVEYANCE *of* LAND *by way of* GIFT *as a* SITE *for a* COTTAGE HOSPITAL (*a*).

Parties.

THIS INDENTURE, made the —— day of ——, 18—, BETWEEN A. B. of, &c. (*donor*), of the first part, and the said A. B., C. D. of, &c., E. F. of, &c., and G. H. of, &c. (*trustees*), of the second part: WHEREAS it is proposed to establish a cottage hospital for the treatment and relief in sickness of poor persons

Recital of intention to establish

(*a*) See p. 441, note (*a*).

OF LAND FOR COTTAGE HOSPITAL.

living in the parishes hereinafter mentioned, and a committee has been appointed to collect subscriptions for the building and endowment thereof, and the parties hereto of the second part are members of such committee: AND WHEREAS the said A. B. has agreed to give the piece of land hereinafter described as a site for such hospital: NOW THIS INDENTURE WITNESSETH, that the said A. B. hereby conveys unto the said parties hereto of the second part, ALL that, &c. (*describe land*), TO HOLD the same unto and to the use of the said parties hereto of the second part in fee simple: AND IT IS HEREBY AGREED AND DECLARED that the parties hereto of the second part and their successors in office for the time being (hereinafter called "the trustees") shall stand possessed of the land hereby conveyed and the building or buildings to be erected thereon, IN TRUST to permit the same to be used as a cottage hospital for the treatment and relief in sickness of poor persons living in the parish of F—— or any of the following parishes, namely: ——, ——, according and subject to such rules and regulations for the management and government of the said hospital as shall hereafter be framed by the trustees or by a committee appointed or approved of by them: AND IT IS HEREBY DECLARED that the rules and regulations to be framed as aforesaid shall provide (among other things) for the appointment of a committee of management or other governing body either by the election of the subscribers or in any other manner which may be thought desirable, but so that the trustees shall always be *ex officio* members of the said committee or governing body, and the said rules and regulations shall also prescribe the conditions of admission to the said hospital; and it may be made one of such conditions that patients able so to do shall pay part of the expense of their maintenance and treatment in the said hospital: PROVIDED ALWAYS, and it is hereby declared, that if at any time the committee of management or other the governing body of the said hospital shall consider that the existing building is inconveniently situate for the purposes of the hospital, and that it will be better to remove the hospital to another site, then and in such case it shall be lawful for the trustees by the direction of the said committee or governing body to sell the land hereby conveyed and the buildings thereon, and with and out of the proceeds of the sale to purchase another site and erect a new hospital thereon: AND

cottage hospital and appointment of committee.

Agreement to give site.

Witnessing part.

Donor conveys site to trustees.

Declaration of trust by trustees,

to permit land and building to be used as a cottage hospital,

according to rules and regulations to be afterwards framed.

Rules and regulations to provide for appointment of committee of management or other governing body,

also conditions of admission.

Power to sell site and with proceeds purchase other site.

OF LAND FOR COTTAGE HOSPITAL.

IT IS ALSO DECLARED that if the committee of management or other governing body of the said hospital shall at any time hereafter consider that the said hospital is no longer required, or for want of adequate support or otherwise cannot be effectually kept up, or that for any other reason it will be desirable to convert the said lands and the buildings thereon or the money to arise from the sale thereof to some other charitable purpose, then and in such case it shall be lawful for the trustees, by the direction of the said committee or governing body, to sell the said land and buildings, and the said trustees shall hold the money to arise from such sale, IN TRUST for all or such one or more exclusively of other or others of the charitable institutions of the town of F——, or for such other purposes for the benefit of the poor inhabitants of F—— as the trustees or the majority of them shall in their absolute and uncontrolled discretion by any deed or writing under their hands and seals direct, appoint, or declare: PROVIDED ALSO, and it is hereby declared, that upon any sale made by the trustees in professed exercise of the powers hereinbefore conferred in that behalf, the statement of the trustees that the sale has been duly authorized by the committee or other governing body shall be conclusive evidence as regards the purchaser of the fact so stated, and the purchaser shall not be bound or concerned to verify the same: AND IT IS HEREBY DECLARED that the power of appointing new trustees conferred by section 31 of the Conveyancing Act, 1881, shall apply to these presents and to the charity hereby established.

Power to give up hospital if no longer required, and to sell land and apply proceeds for other charitable purposes.

Statement of trustees to be sufficient evidence that sale is authorized.

Statutory power of appointing new trustees to apply.

IN WITNESS, &c.

No. VIII.

CONVEYANCE *on* SALE *to the* TRUSTEES *of a* CHARITABLE INSTITUTION *supported by* VOLUNTARY CONTRIBUTIONS *of a piece of* LAND *as a* SITE *for* ADDITIONAL BUILDINGS (*a*). ON SALE TO TRUSTEES OF INSTITUTION.

THIS INDENTURE, made the —— day of ——, 18—, BETWEEN A. B. of, &c. (*vendor*), of the one part, and C. D. of, &c., E. F. of, &c., and G. H. of, &c., the trustees of an institution known as —— (hereinafter called "the trustees"), of the other part: WHEREAS the trustees, by the direction of the committee of management of the said institution, have agreed with the said A. B. to purchase from him, for the sum of £——, the piece of land hereinafter described, it being intended to erect thereon an additional building for the purpose of the said institution: AND WHEREAS the funds of the said institution are derived entirely from voluntary subscriptions: NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement and in consideration of the sum of £—— paid to the said A. B. by the trustees out of the general funds of the said institution (the receipt whereof the said A. B. hereby acknowledges), the said A. B., as beneficial owner hereby conveys unto the trustees ALL, &c. (*parcels*), TO HOLD the same unto and to the use of the trustees in fee simple, IN TRUST for the purposes of the said institution, and to be from time to time conveyed and disposed of by way of sale, exchange, mortgage, or otherwise, in such manner as the committee of management, or other the governing body for the time being of the said institution, shall direct.

Parties.

Recital of agreement to purchase.

Witnessing part.

Conveyance of land to trustees.

IN WITNESS, &c.

(*a*) This deed must be enrolled; but as the purchase-money comes out of the general funds of the institution, it is apprehended that the deed will not be invalidated by the death of any person within twelve months.

No. IX.

OF LAND AS A SITE FOR AN IRON CHURCH.

CONVEYANCE *of* LAND *as a* SITE *for an* IRON CHURCH, *with power to the* TRUSTEES *to convey it to the* ECCLESIASTICAL COMMISSIONERS *in case of its being* ENLARGED *into a* PERMANENT BUILDING.

Tenant for life in possession and tenant in tail in remainder convey land.

UNDER the authority of an Act of Parliament, passed in the 36th and 37th years of her Majesty Queen Victoria, intituled "An Act to afford further facilities for the conveyance of land for sites for places of religious worship and for burial places," I, A. B., being under or by virtue of the will of X. Y. of, &c., tenant for my life in possession of (among other hereditaments) the piece of land hereinafter described, and intended to be hereby conveyed, Do by these presents freely and voluntarily and without any valuable consideration, and with the concurrence hereby testified of my eldest son, C. B., the person next entitled under the said will for a beneficial interest in remainder in fee tail in the said piece of land, give, grant, and convey, and I, the said C. B., do hereby freely and voluntarily, and without any valuable consideration, grant and confirm unto the Rev. E. F., the present vicar of the parish of ——, and G. H., and I. K., the present churchwardens of the said parish, ALL, &c.: TO HOLD unto and to the use of the said E. F., G. H., and I. K., and their heirs, for the purpose of the said Act, and to be applied (either alone or in conjunction with any adjoining land which may be obtained for the purpose) as a site for a church or chapel of ease, to be licensed by the Archbishop of Canterbury for the celebration of divine service according to the doctrine and rites of the Church of England as by law established, and for no other purpose whatever: AND IT IS HEREBY DECLARED, that unless and until the said land shall become vested in the Ecclesiastical Commissioners as hereinafter provided, the erection of the church or chapel thereon, and the arrangements for the conduct of divine service therein, and the management of the same generally, shall be under the sole control of the persons who shall, for the time being, be the vicar and churchwardens of the said parish of ——: AND if and whenever the legal estate

To vicar and churchwardens of parish as site for a church.

Vicar and churchwardens to have sole control.

OF LAND AS A SITE FOR AN IRON CHURCH.

in the said land shall, under these presents, be vested in any person or persons other than the vicar or churchwardens for the time being, such person or persons shall convey and deal with the same from time to time as the said vicar and churchwardens shall direct: AND WHEREAS it is contemplated at present to erect only an iron temporary church on the said land (to be licensed by the Archbishop of Canterbury), the same not being large enough for a permanent building, but it is hoped that the site may hereafter be enlarged by the acquisition of other land, and that a permanent church may be then built, in which case it might be desirable that the same should be vested in the Ecclesiastical Commissioners for England under the Church Building Acts: NOW IT IS HEREBY PROVIDED AND DECLARED that if the said vicar and churchwardens, for the time being, shall at any time hereafter determine to have a permanent church erected either wholly on the land hereby conveyed, or partly on that land and partly on other land to be hereafter acquired for the purpose, then and in such case it shall be lawful for the said vicar and churchwardens to convey the said land, or cause the same to be conveyed, to the Ecclesiastical Commissioners, or as the said Commissioners shall direct, to be devoted when consecrated to ecclesiastical purposes for ever, by virtue and according to the true intent and meaning of the Church Building Acts.

Recital that iron church intended at first, and ultimately a permanent church.

Declaration that if permanent church built, site may be conveyed to Ecclesiastical Commissioners.

IN WITNESS &c.

No. X.

DEMISE FOR PUBLIC PARK.

DEMISE *of* LAND *for a* LONG TERM *at a* NOMINAL RENT *to an* URBAN SANITARY AUTHORITY *for a* PUBLIC PARK *or* RECREATION GROUND (*a*).

THIS INDENTURE made, &c., BETWEEN A. B. of, &c., of the one part, and the mayor, aldermen, and burgesses of the borough of —— in the county of ——, being the urban sanitary authority for the said borough (hereinafter called "the lessees"), of the other part: WITNESSETH that the said A. B.

Parties.

Demise to urban

(*a*) See the Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 164. This deed will not require enrolment. See Mortmain and Charitable Uses Act, 1888, s. 6.

DEMISE FOR PUBLIC PARK.

hereby demises unto the lessees ALL that piece of land, &c., EXCEPT and reserving unto the said A. B., his heirs and assigns (all of whom are hereinafter included in the term "the reversioner"), all mines of coal, ironstone, and fireclay, in and under the said premises, with all necessary powers for getting the same, so that no entry be made upon the surface of the said ground for that purpose, but so also that the present or future owners or lessees of the minerals shall not be liable for any damage that may have arisen or have been occasioned, or may hereafter arise or be occasioned, to the surface or to any present or future buildings or erections thereon, by subsidence or otherwise, in consequence of working the minerals or any adjacent minerals, and whether the minerals or any of them have been already worked or got or shall hereafter be worked or got, it being the intent of the parties hereto that no right to the support of the surface by any subjacent or adjacent strata or stratum of minerals shall be conferred on the lessees or implied from this lease: BUT with power for the lessees to dig for and use any common clay, marl and sand in the said land for the purposes of the park hereinafter mentioned, but so that such clay, marl and sand shall not be manufactured into bricks or other articles, or be sold or removed from the said land: TO HOLD the same (subject to the rights of the tenants under existing yearly tenancies of the said premises or any part thereof) unto the lessees for the term of 999 years from the —— day of ——, 18—, YIELDING and PAYING therefor the yearly rent of ten shillings: AND the lessees hereby covenant with the said A. B. and other the reversioner in manner following (that is to say): THAT the lessees will during the said term pay all existing and future rates, taxes, assessments, and outgoings of every description for the time being payable either by landlord or tenant in respect of the land hereby demised; AND also will forthwith at their own expense proceed to lay out the land hereby demised as and for a public park or recreation ground, and will for that purpose plant the same with ornamental trees and shrubs, and make and construct such roads and footpaths through the same as may be necessary or convenient; AND also will at their own expense fence the said land from the adjoining property with a dwarf stone wall and iron palisading, the said fence to be completed within ——

authority of land,

except and reserving mines and minerals, with power to work same,

for term of 999 years, at nominal rent.

Covenant by lessees to pay rates and taxes;

to lay out land as a park;

to fence it;

DEMISE FOR PUBLIC PARK.

calendar months from the date hereof; And also will permit the inhabitants of —— and the neighbourhood thereof, and the public generally, to have the use and enjoyment of the said land as a public park for the purposes of recreation at all reasonable times during the said term; And will not at any time permit public meetings for the discussion of political, religious, trade, or social questions, or other matters of controversy to be held, or religous services to be conducted, or lectures or addresses delivered on any part of the said land, nor permit the said land or any part thereof to be used except as a public park or for any other purposes than those of recreation and enjoyment; And will not do or suffer any act or thing which may be or grow to the annoyance, damage, or disturbance of the reversioner or his tenants or lessees or the owners or occupiers of any adjoining or neighbouring property; And will not assign, underlet, or part with the possession of the said land or any part thereof during the said term without the previous licence in writing of the reversioner; And will not during the said term erect, or suffer to be erected, on any part of the said land any building or erection, either permanent or temporary, without the previous licence in writing of the reversioner: Provided always, and it is hereby agreed and declared, that it shall be lawful for the lessees from time to time to make such bye-laws and regulations as they shall deem necessary or convenient for securing to the public the reasonable use and enjoyment of the said park, and for the maintenance of order and decency therein, and for any other purposes for which bye-laws and regulations are usually made in like cases.

to permit inhabitants of —— and public generally to have use and enjoyment as a public park.

Not to permit political or religious meetings.

To do nothing which may be an annoyance to neighbouring property.

Not to assign, &c., without consent.

Not to erect any building without consent.

Lessees may make bye-laws.

In witness, &c.

No. XI.

OF SITE FOR DISSENTING CHAPEL.

CONVEYANCE *on a sale of a* Building *and* Land *for a* Nonconformist Chapel *and a* Minister's House (*a*).

THIS INDENTURE, made the —— day of ——, 18—, Between A. B. of, &c., of the one part, and (*trustees*), of the other

Parties.

(*a*) This deed seems to come within sect. 7, sub-sect. 2 of the Mortmain and Charitable Uses Act, 1888, so far as the land is to be used for the

OF SITE FOR DISSENTING CHAPEL.

Conveyance of building and land by vendor to trustees;

in trust to permit same to be used as a place of worship by dissenting society,

and as a minister's house,

part, WITNESSETH that in consideration, &c., the said A. B., as beneficial owner, hereby conveys unto the said (*trustees*) ALL, &c. (*parcels*), TO HOLD the same unto and to the use of the said (*trustees*) in fee simple, UPON TRUST at all times hereafter to permit the said premises to be used as a place of public worship by the society of Protestant Dissenters, called ——, and to permit to officiate in the said building, and to reside in any house which may hereafter be erected upon the same premises, such person or persons of the denomination of Protestant Dissenters, called ——, as the members of the said society present at any church meeting duly assembled for that purpose, by public notice to be given in the said building during public worship on the two Sundays immediately preceding such church meeting, or two-thirds of them in number, shall from time to time elect as their minister or pastor during their will and pleasure; AND

and to allow Sunday school and other school to be held in building.

upon FURTHER TRUST, in case a schoolroom shall be erected or provided upon the said premises, or if there shall be no separate schoolroom or schoolrooms, and it shall by the members of the said society present at their church meeting duly assembled as aforesaid, or two-thirds of them, be thought necessary or expedient to hold a Sunday or other school or schools in any proper part of the said building, to permit a Sunday or other school or schools to be held, conducted, and carried on from time to time in the said building, but only at such hours and times as shall not interfere with divine worship, and in all cases subject to such regulations as shall be agreed upon by the members of the said society at a church meeting duly assembled as aforesaid, or two-third parts of them in number: AND upon

Power to mortgage, sell, exchange, and lease.

FURTHER TRUST from time to time to raise such sum or sums of money as the members of the said society present at a church meeting duly assembled as aforesaid, or two third parts of them in number, shall direct by mortgage or mortgages of all or any part of the said premises, and also when thereunto required by the members of the said society present at a church meeting

erection of a chapel, &c.; but as the trustees have power to apply the proceeds of a sale for promoting the objects of the society generally, it may be open to some question whether this is covered by the exemption. On the whole, it will be prudent to enrol the deed in the Central Office, and to let the vendor execute it in the presence of two witnesses.

Under the Places of Worship Registration Act, 1855, the building will be free from the provisions of the Charitable Trusts Act so long as it is *bonâ fide* used as a place of religious worship.

duly assembled as aforesaid, or two third parts of them in number, to make sale of the said premises, or exchange the same or any part thereof for or in lieu of any other hereditaments, whether freehold, copyhold, customary, or leasehold, or to let or demise the same for any term of years (*b*): PROVIDED ALWAYS, that the trustees for the time being shall stand seised or possessed of the hereditaments and premises which shall be so taken in exchange upon the same trusts as are hereinbefore declared concerning the hereditaments hereby assured, and shall stand possessed of the money which from time to time shall be received on any mortgage, sale, or exchange, or for or in respect of the rents and profits of the said premises, UPON TRUST to lay out and apply the same either in the purchase of other hereditaments, to be held upon the same trusts as are hereinbefore declared concerning the said premises hereby conveyed, or in the repair or improvement of the trust property, or for promoting the objects of the said society, in such manner as the members of the said society present at a meeting to be called for that purpose as aforesaid, or two third parts of them in number, shall from time to time direct; AND upon FURTHER TRUST that in case the said society shall be totally dissolved or dispersed, or the regular public worship at the said building be discontinued for twelve calendar months together, the UPON TRUST for, &c., (*here specify the trust or object for which the building may be used in the event referred to*): PROVIDED ALSO, that so often as the number of the trustees shall by death or otherwise be reduced to five or less, or oftener if the members of the said society shall think it expedient, so many others shall be appointed trustees as shall make up the whole number of trustees to nine, such new trustees to be from time to time appointed by the members of the said society present at their church meeting duly asembled as aforesaid, or two third parts of them in number.

OF SITE FOR DISSENTING CHAPEL.

If society is dissolved, premises to be held on other trusts.

IN WITNESS, &c.

(*b*) The above powers of mortgaging, selling, exchanging and leasing cannot be exercised after the building has ceased to be used as a place of religious worship without the approval of the Charity Commissioners; and in a mortgage made by order of the Commissioners provisions will be inserted for paying off the principal money by instalments: 18 & 19 Vict. c. 124, ss. 29, 30.

No. XII.

APPOINTMENT OF NEW TRUSTEES OF CHAPEL.

APPOINTMENT *of* NEW TRUSTEES *of the* CHAPEL, *&c.*, *erected pursuant to the last Precedent* (*a*).

MEMORANDUM of the choice and appointment of new trustees of the chapel at ——, in the county of ——, known as

Statutory provisions for facilitating the appointment of new trustees of land held in trust for religious or educational purposes.

(*a*) Provision is made to facilitate the appointment of new trustees, held in trust for religious or educational purposes, by the Trustees Appointment Acts, 1850 to 1890 (13 & 14 Vict. c. 28; 32 & 33 Vict. c. 26; and 53 & 54 Vict. c. 19). The Act of 1850 provides that whenever freehold, leasehold, or copyhold property has been or shall be acquired by any congregation, society, or body of persons associated for religious purposes, or for the promotion of education, as a chapel, meeting house, or other place of religious worship, or as a dwelling-house for the minister, with offices, gardens, and glebe, or land in the nature of glebe, for his use, or as a schoolhouse, with the schoolmaster's house, garden, and playground, or as a college, academy, or seminary, with or without grounds, for air, exercise, or recreation, or as a hall or rooms for the meeting or transaction of the business of such congregation, or society, or body of persons; and whenever the conveyance, &c. of such property has been or may be taken to or in favour of a trustee or trustees to be from time to time appointed, or of any party named in such conveyance, &c., or subject to any trust for the congregation, or society, or body of persons, or of the individuals composing the same, such conveyance, &c. shall not only vest the property in the party or parties named therein, but also in their successors in office for the time being, chosen and appointed in the manner provided or referred to in the conveyance, &c., or in any separate deed or instrument declaring the trust, without any transfer or other assurance. And the Act also provides that every choice and appointment of a new trustee shall be made to appear by some deed under the hand and seal of the chairman for the time being of the meeting at which the appointment shall be made, and shall be executed in the presence of such meeting and attested by two or more credible witnesses, and the deed may be in the form or to the like effect of the schedule to the Act.

Conveyance of land acquired by trustees to vest in their successors in office without any assurance.

Appointment of new trustees, how to be evidenced.

The Act of 1850 is extended by the Act of 1869 to burial grounds.

Extension of Act of 1850 by Act of 1890.

By the Act of 1890 the Act of 1850 is declared to apply to and include any land acquired by trustees in connection with any society or body of persons comprising several congregations or other sections or divisions, or component parts associated together for any religious purpose, when such land is held in trust for any of the following purposes, namely: (1) a place for religious worship; (2) an endowment or provision for the maintenance of any place of religious worship or the minister thereof, or provision for expenses connected therewith; (3) a burial ground; (4) a place of education and training of students, whether for the ministry or for any other purpose; (5) a schoolhouse for a Sunday school, day school, or other school; (6) a residence for a minister or schoolmaster, or for the caretaker of a place of religious worship, or of a schoolhouse or a meeting-house or offices or other buildings for or in connection with religious or educational purposes.

Statutory power to

The power for the appointment of new trustees, conferred by the Conveyancing Act, 1881, or any other statutory power for the same purpose

APPOINTMENT OF NEW TRUSTEES OF CHAPEL.

The —— Independent Chapel, and the minister's house adjoining thereto, at a meeting duly convened, constituted, and held for that purpose in the vestry-room of the said chapel on the —— day of ——, 18—. X. Y. of, &c., chairman.

Names and descriptions of all the trustees named in the deed of conveyance of the site of the said chapel and premises, dated the —— day of ——, 18— [*or* on the last appointment of trustees made the —— day of ——, 18—].

A. B. of, &c.
C. D. of, &c.
E. F. of, &c.
G. H. of, &c.
I. K. of, &c.
L. M. of, &c.
N. O. of, &c.

Names and descriptions of all the trustees in whom the said chapel and premises now become legally vested.

First—Old continuing trustees:

E. F. of, &c.
G. H. of, &c.
I. K. of, &c.
L. M. of, &c.
N. O. of, &c.

Second—New trustees now chosen and appointed:

P. Q. of, &c.
R. S. of, &c.

Dated this —— day of ——, 18—.

X. Y. (L.S.)
Chairman of the said meeting.

Signed, sealed, and delivered by the said X. Y., as chairman of the said meeting, at and in the presence of the said meeting, on the day and year aforesaid, in the presence of

T. U.
W. Z.

---

for the time being in force, applies to all land acquired and held on trust for any of the purposes to which the above Acts apply. And any such statutory power may be exercised either by the person or persons and in the manner provided by that power, or by the person or persons and by

appoint new trustees made applicable to cases under these Acts.

No. XIII.

CONVEYANCE ON SALE OF CHARITY LANDS.

CONVEYANCE *upon a* SALE *of* CHARITY LANDS *with the* APPROVAL *of the* CHARITY COMMISSIONERS (*a*).

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c., and C. D. of, &c., the trustees of a charity called, &c. (*state the title of the charity*), of the one part, and E. F. of, &c. (*purchaser*), of the other part: WHEREAS the said A. B. and C. D. lately agreed to sell to the said E. F. the hereditaments intended to be hereby conveyed (being part of the lands belonging to the said charity), at the price of £——, but subject to the approbation of the said sale by the Charity Commissioners for England and Wales: AND WHEREAS by an order under the common seal of the said Charity Commissioners, dated the —— day of ——, the said Commissioners having inquired into the circumstances, and being satisfied that the proposed sale would be advantageous to the charity, authorized the said sale, and gave directions to the said A. B. and C. D. to carry the same

Agreement for sale by trustees of charity.

Subject to approval of Charity Commissioners.

Order of Charity Commissioners approving sale.

resolution at a meeting, or in any other mode in which, under the instrument creating the trust, the appointment of a new trustee in the place of a deceased trustee can be effected; but where a special qualification is required, persons so qualified shall alone be appointed (sect. 3).

Where, by force of the Act of 1890, an appointment of a new trustee is capable of being made under a power in any instrument, as well as under a statutory power, no appointment is to be made under the statutory power until twelve months after the happening of the vacancy (sect. 5).

Provision against concurrent exercise of powers.

After the expiration of six months from the date of an appointment of new trustees, the persons appointed shall be deemed duly appointed and can make a valid and effectual conveyance to any purchaser or mortgagee (if no proceedings are taken in the meantime to impeach the appointment) (sect. 6).

After six months, appointment to be valid in favour of purchaser.

Whenever the trustees, or the major part of the trustees, or any other persons present at a meeting duly constituted, are empowered to appoint trustees by resolution, then a memorandum of the appointment, which states that the meeting was duly constituted, and which is otherwise made in the form or to the effect and also subscribed in the manner directed or provided in the Act of 1850 and the schedule thereto, is sufficient and conclusive evidence that the appointment was duly made, without any evidence of the due constitution of the meeting or of the proceedings thereat (sect. 7).

Memorandum in statutory form to be conclusive evidence of certain matters.

The above Precedent is in accordance with the form in the schedule to the Act of 1850.

(*a*) It is assumed in the above Precedent that the charity is an endowed one. See p. 440, *supra*.

into effect: NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and by virtue of the said order of the said Charity Commissioners, and in consideration of the sum of £—— to the said A. B. and C. D. paid by the said E. F., &c. (*the receipt, &c.*), the said A. B. and C. D., as trustees, hereby convey unto the said E. F., ALL, &c. (*parcels*): TO HOLD the same unto and to the use of the said E. F. in fee simple.

CONVEYANCE ON SALE OF CHARITY LANDS.

Witnessing part.

Consideration.

Trustees convey to purchaser in fee.

IN WITNESS, &c.

No. XIV.

CONVEYANCE *upon a* SALE *by* TRUSTEES *of a* CHARITY *supported by* VOLUNTARY CONTRIBUTIONS (*a*).

ON SALE OF CHARITY LANDS.

THIS INDENTURE, made the —— day of ——, 18—, BETWEEN A. B. of, &c., C. D. of, &c., and E. F. of, &c., the trustees of a charitable institution established at ——, called —— (*vendors*), of the one part, and G. H. of, &c. (*purchaser*), of the other part (*recite conveyance to the trustees of property of which the land sold is part*): AND WHEREAS the said sum of £—— paid as purchase-money for the hereditaments comprised in the hereinbefore-recited indenture arose entirely from voluntary contributions, and was money applicable for the general purposes of the institution at the discretion of the committee of management for the time being: AND WHEREAS at a general meeting of the governors of the said institution held at —— on the —— day of —— last, it was resolved that the land intended to be hereby conveyed being no longer required for the purposes of the institution, should be sold by the committee of management at such price as the committee should think fit: AND WHEREAS the committee of management entered into negotiations with the said G. H. for the sale of the said land, and the said G. H. made an

Parties.

Recite conveyance to trustees.

That purchase-money arose from voluntary contributions.

Meeting of governors at which committee was empowered to sell.

Offer by purchaser.

(*a*) The consent of the Charity Commissioners is not necessary. See p. 440, *supra*.

ON SALE OF CHARITY LANDS.

offer of £—— for the same: And whereas at a meeting of the committee of management held at —— on the —— day of —— last, it was resolved that the offer of the said G. H. to buy the said land for £—— be accepted, and that the said A. B., C. D., and E. F., as the trustees of the said institution, be directed to convey the said land to the said G. H., and to receive the purchase-money: NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and in consideration of the sum of £—— paid by the said G. H. to the said A. B., C. D., and E. F., as the trustees of the said institution (*the receipt, &c.*), the said A. B., C. D., and E. F., as trustees, hereby convey unto the said G. H., All, &c. (*parcels*), To hold the same unto and to the use of the said G. H. in fee simple.

Resolution of committee accepting offer.

Witnessing part.

Consideration.

Trustees to convey to purchaser in fee.

In witness, &c.

No. XV.

CONVEYANCE OF SCHOOLHOUSE TO SCHOOL BOARD.

CONVEYANCE *of a* Schoolhouse *by the* Managers *of an* Elementary School *to a* School Board, *under Section* 23 *of the* Elementary Education Act, 1870.

Parties.

THIS INDENTURE, made the —— day of ——, 18—, Between A. B. of, &c., C. D. of, &c., E. F. of, &c., G. H. of, &c., J. K. of, &c., L. M. of, &c., O. P. of, &c. (being the majority of the trustees of a certain charity called L—— Charity and competent as such to act, and for the purposes of these presents acting, as the managers of the said charity), of the one part, and the School Board for —— (hereinafter called "the Board") of the other part: Whereas M. L., late of ——, deceased, by her will, bearing date the —— day of ——, and which was duly proved in the Prerogative Court of Canterbury, on the —— day of —— in the same year, bequeathed certain leasehold premises therein mentioned unto certain trustees in her said will named upon trust to apply the annual income thereof in the bringing up, instructing, and educating in the principles of the Christian religion as the same was then taught, professed, and

Recital of will of founder of school.

practised in the Established Church of England, 40 poor children—namely, 20 boys and 20 girls of the said parish of ——, and that the said trustees, or the major part of them, should choose and nominate the children to be from time to time entitled to the benefit of the said charity; AND WHEREAS by a scheme annexed to a decree of the High Court of Chancery, made in a suit instituted in the said Court for the administration of the trusts of the said charity, in which suit ——, churchwardens of —— aforesaid, and ——, overseers of the poor of the said parish, on behalf of themselves and 20 poor boys and 20 poor girls, were plaintiffs and —— were defendants, and which scheme was confirmed by the Lord Chancellor on the —— day of ——, it was (among other things) provided that the trustees for the time being of the said charity, or the major part of them, should from time to time visit the schools of the said charity, elect the objects thereof, and appoint the schoolmasters and schoolmistresses of the same schools, and should, as often in any year as they might think proper, meet at the schoolhouse and examine into the conduct and behaviour of the masters and mistresses, and of such poor children, and see the state and condition of the said school, and consult of proper measures to be taken in and about the performing and executing their said trust, and render accounts thereof; AND WHEREAS by an order of the Board of Charity Commissioners for England and Wales bearing date the —— day of ——, it was ordered that the said several persons, parties hereto of the first part, together with (*other trustees*), be appointed to be trustees for the administration of the said charity: AND WHEREAS the trustees of the said charity are seised or entitled in fee simple, as part of the property of the said charity of or to the schoolhouses and premises, situate at —— aforesaid hereinafter described, and hereby intended so to be conveyed, subject to the payment of a yearly fee farm or ground rent of £2: AND WHEREAS the schools established by the said charity have been maintained and supported in part by the funds of the said charity; and in further part by the voluntary subscriptions of persons residing in or in the neighbourhood of —— aforesaid; and in further part by an annual grant out of funds appropriated by Parliament for public education in Great Britain: AND WHEREAS at a meeting of trustees of the said charity, held at the schoolhouse at ——

CONVEYANCE OF SCHOOL-HOUSE TO SCHOOL BOARD.

Scheme approved by the Court of Chancery for the administration of the charity.

Order of Charity Commissioners appointing trustees.

That trustees are seised of schoolhouse.

That schools have been maintained partly out of their own funds, and partly by subscriptions, and partly by government grant.

Meeting of trustees, and resolution to

CONVEYANCE OF SCHOOL-HOUSE TO SCHOOL BOARD.

transfer schoolhouse to board.

aforesaid, on the —— day of —— last, in pursuance of a notice for that purpose duly given, by affixing the same against the door of the parish church at ——, and by a post letter addressed to each of the trustees of the said charity, and which notice was dated the —— day of ——, and which meeting was attended by all the trustees of the said charity, except the said ——, It was (amongst other things) resolved by a majority of the trustees present at such meeting, and which majority was constituted of the several persons parties hereto of the first part, that in consequence of the falling off of the subscribers to the said schools and the inadequacy of the funds within the control of the trustees sufficiently to maintain and support the said schools, it would be for the benefit of all persons interested in the said charity that the said schoolhouses should be transferred to the School Board of the parish, reserving to the trustees the exclusive use of the schoolrooms for the purposes of their trusts, on every Sunday, and also between the hours of 9 and 9.45 in the morning on every Friday in each year, the Board undertaking the repairs and insurance against fire of the school premises, and paying the ground rent in respect of the same: AND WHEREAS on the —— day of —— the said proposed arrangement for the transfer to the said Board of the said schoolhouses received the consent of twenty-five, being all of the annual subscribers to the said schools, who were present at a meeting duly summoned and voted on the question, and also received the consent of the Education Department on the —— day of ——, and the same arrangement was afterwards, in the terms of the said resolution, embodied in certain articles of agreement, bearing date the —— day of ——, and made between, &c. (*parties*): NOW THIS INDENTURE WITNESSETH, that for carrying into effect the said arrangement in relation to the said schoolhouses, and pursuant to and in exercise of the powers and authorities for that purpose conferred by the Elementary Education Act, 1870, THE said several persons, parties hereto of the first part, in the character of managers of the said schools, do hereby convey unto the said Board: ALL THOSE the schoolhouses situate at —— aforesaid, now or lately used for the purposes of the said charity, together with the yard, play-grounds, outbuildings, and other the premises to the same belonging, which said schoolhouses, play-grounds, and other premises, are delineated in the plan drawn

That proposed transfer was consented to by all the subscribers and by Education Department.

Witnessing part.

Managers convey schoolhouses

CONVEYANCE OF SCHOOL-HOUSE TO SCHOOL BOARD.

in the margin of these presents, and are distinguished thereon by the colour pink, and the same have been erected upon and formed out of a certain piece of land, which was in the year —— conveyed to the trustees of the said charity by one H. S. by the description following (namely), All that, &c. (*describe land*), To hold the said premises (subject to the said yearly fee farm rent of £2 payable thereout) unto and to the use of the Board in fee simple: To and for the intents and purposes following (namely): To the intent and purpose that the Board shall from time to time hereafter out of the funds under their control pay the said rent payable in respect of the said premises, and keep the said schoolhouses and premises, and the fences separating the same from the adjoining properties, in good repair, and the buildings insured against loss or damage by fire in a sum equal to the value thereof, in some respectable office of insurance, to be selected by the Board, and approved of by the trustees or trustee for the time being of the said charity, or such of them as shall be competent to act in the execution of the trusts of the said charity; and subject as aforesaid: To the intent and purpose that the trustees or trustee for the time being of the said charity may have the exclusive use of the said schoolhouses, for the purposes of their trust, on every Sunday in each year, and also between the hours of 9 and 9.45 in the morning of every Friday in every year; and subject as aforesaid: To the intent and purpose that the said schoolhouses and premises may be deemed to be a school provided by the Board within the meaning of the Elementary Education Act, 1870.

to the board;

to the intent that they shall pay the ground rent, and keep the premises in repair and insured.

And subject thereto, to the intent that trustees of the charity may have use of premises on Sundays and during certain hours on every Friday.

And subject thereto, that same may be a school provided by board within the Act.

In witness, &c.

WILLS.

Characteristics of a will.

THE principal characteristic of a will is, that it is ambulatory and revocable, and has no operation during the life of the testator. The form of the instrument is not of importance, so long as its terms are testamentary (*a*); but if the instrument is in the form of a deed, the circumstance of the grantor reserving a life interest to himself, with a general power of revocation, does not make it testamentary (*b*).

Division of the subject.

It is proposed in this Dissertation to consider the subject of wills under the following heads:—I. What property can be disposed of by will, who may make a will, how a will must be executed and attested, and what amounts to a revocation of a will. II. As to the time from which a will speaks, what property passes under a general devise or bequest, and what words are sufficient to carry the fee simple. III. In what cases the trustees take the legal estate under a devise, and as to the extent of their estate. IV. Legacies, general and specific, vested and contingent, gifts to children, next of kin, legal representatives, &c. V. Lapse. VI. For what period the vesting of property given by will may be postponed, or income may be accumulated, having regard to the rule against perpetuities and the Thellusson and Accumulation Acts. VII. Gifts to charities. VIII. Conversion. IX. In what cases precatory words in a will, or instructions by parol or an unattested writing, create a trust. X. The effect of a charge of debts and the implied power of sale

(*a*) See Williams on Executors, Pt. 1, Bk. ii. c. 2, s. 3.

(*b*) Thompson *v.* Browne, 3 M. & K. 32.

thereby created. XI. Devolution of real estate on death, and the mode in which the personal estate of an intestate is distributed. And XII. The probate of wills and the duties on probates and letters of administration, and on accounts, legacy and succession duties, and estate duty.

I. *What property may be disposed of by will, who may make a will, how a will must be executed and attested, and what is a revocation of a will.*

What property may be disposed of by will.

The Act 1 Vict. c. 26 (commonly called the Wills Act) enables every person to dispose by will of all real and personal estate which he shall be entitled to, at law or in equity, at the time of his death, and which, if not so disposed of, would devolve upon his heir-at-law or customary heir, or if he became entitled by descent, upon the heir-at-law or customary heir of his ancestor, or upon his executor or administrator, including estates *pur autre vie*, contingent, executory, or other future interests, and rights of entry for conditions broken (*c*).

As to copyholds.

A devisee of copyholds must pay the fees and fines on his admission as if he were a surrenderee; and the testamentary disposition should be entered on the court rolls (*d*).

Estates *pur autre vie.*

An estate *pur autre vie* of a freehold nature not disposed of by will is assets by descent in the hands of the heir, if it comes to him by reason of special occupancy, as in the case of freehold land in fee simple; and where there is no special occupant, it goes to the executor or administrator of the party that had the estate thereof by virtue of the grant, and an estate *pur autre vie* coming to an executor or administrator, either by reason of a special occupancy or by virtue of the Act, is assets in his hands, to be applied and distri-

(*c*) Sect. 3. A person in possession of land without other title has a devisable interest. Asher *v.* Whitlock, L. R. 1 Q. B. 1.

(*d*) Sects. 4, 5. See 4 & 5 Vict. c. 35, s. 89.

buted in the same manner as the personal estate of the testator or intestate (*e*).

In a case where an estate *pur autre vie* was limited to a devisee and his heirs, and the devisee died without heirs, it was held that, under the above section, the estate went to his executors (*f*).

Infants.

Previously to the Wills Act an infant could not dispose by will of real estate; but with respect to personalty a female might make a will at twelve and a male at fifteen, if proved to be a person of discretion (*g*). Since the Wills Act *no* will of an infant is valid (*h*).

Testamentary power of married woman before Act of 1882.

Between the passing of the Wills Act and the Married Women's Property Act, 1882, the position of a married woman as regards the power of disposition by will was as follows:—She could dispose by will of real or personal property belonging to her for her separate use, whether acquired before or after the date of the will, and could exercise a testamentary power of appointment, whether vested in her then or afterwards conferred on her, and she could, if an executrix, appoint an executor to carry on the representation (*i*). But as regards property not belonging to her for her separate use, she was under an absolute incapacity to make a will. Thus, if she made a will during coverture and then became a widow, the will would not pass property acquired by her during the widowhood (*k*).

Her testamentary powers since that Act.

Since the passing of the Married Women's Property Act, 1882, a woman married on or after the 1st January, 1883, has the same testamentary power over all property belonging to her during the coverture, and a woman married before that date has the same testamentary power over property her title to which in possession, reversion, or remainder, accrues after that date and during her coverture, as if she were a

(*e*) Sect. 6.

(*f*) Reynolds *v.* Wright, 25 Beav. 100; on appeal, 2 De G. F. & J. 590.

(*g*) Bishop *v.* Sharp, 2 Vern. 469.

(*h*) Sect. 7.

(*i*) 2 Bright's H. & W. 66; 1 Wms. Exors., Part 1, Bk. ii. c. 1, s. 2; *ib.* Part 1, Bk. v. c. 2, s. 1.

(*k*) Noble *v.* Willock, L. R. 8 Ch. 779.

feme sole. But a will made by a married woman since 1882 does not pass property acquired by her after the determination of the coverture (*l*). A married woman can act as an executrix under any will which comes into operation on or after the 1st January, 1883.

Traitors and felons are incapacitated from alienation, while undergoing their punishment, but, as the incapacity ceases at death, they may, it is apprehended, dispose by will of real or personal estate (*m*). Traitors and felons.

Lunatics, idiots, and other persons incapacitated from disposing of property by deed, are equally incapable of making a will. Lunatics, &c.

Under the Statute of Frauds it was necessary that a devise of freehold estates should be attested by three credible witnesses; but until the Wills Act a will of copyholds or of personal estate required no attestation, and even if the testator's signature was wanting the testamentary instrument was supported, if it was reduced into writing by the testator's direction and in his lifetime (*n*). But since the Wills Act every will, whether of real or personal property, must be in writing and signed at the foot or end thereof by the testator or by some other person in his presence and by his direction, and such signature must be made or acknowledged by the testator in the presence of two or more witnesses present at the same time, and the witnesses must attest and subscribe the will in the presence of the testator, but no form of attestation is necessary (*o*). And an appointment made by will in exercise of any power must be executed in like manner, and such execution is sufficient, notwithstanding that some additional or other form of execution or solemnity may be required by the instrument creating the power (*p*). Certain exceptions are, however, allowed as regards the wills of soldiers and sailors (*q*). How a will made before the Wills Act must have been executed. Under Wills Act, how will must be executed.

Where a power of appointment is to be exercised by a writing under the hand and seal of the donee, it Powers of appointment by writing under hand and seal.

(*l*) *Re* Price, 28 C. D. 709.
(*m*) 33 & 34 Vict. c. 23; 1 Jarm. on Wills, 4th ed. 44.
(*n*) 1 Jarm. on Wills, 98.
(*o*) Sect. 9.
(*p*) Sect. 10.
(*q*) Sects. 11 and 12. See also 28 & 29 Vict. c. 72.

cannot be exercised by a will of the donee, executed according to the formalities of the Wills Act, if it is not also sealed (*r*); and a power of appointing by a writing under hand or by will is not well exercised by a testamentary instrument unattested (*s*).

Position of the signature.

Questions having frequently arisen as to the sufficiency of the signature with reference to its *position*, an explanatory Act (*t*) was passed, which made the signature sufficient if so placed at, or after, or following, or under, or beside, or opposite to, the end of the will, that it should be apparent on the face of the will that the testator intended to give effect by such his signature to the writing signed as his will, and the Act enumerates various circumstances as regards the position which are not to affect the validity of the will.

Presumption that will is duly executed and attested, when it applies.

Where a will has a formal attestation clause, and appears on the face of it to be properly executed, the Court will presume that the requirements of the Wills Act have been complied with, although the memory of the witnesses may have failed. When the attestation clause is informal, the presumption *omnia rite esse acta* applies with less force; but even in that case, the leaning of the Court is not to allow the testator's intention to be frustrated by lapse of time and failure of the memory of the witnesses; and if therefore the circumstances are such as reasonably to lead to the conclusion that the will was duly executed, the Court will adopt that conclusion (*u*). But even where there is a regular attestation clause, the Court cannot pronounce a will to be duly executed, in the face of the direct testimony of the attesting witnesses to the contrary (*x*).

Person interested not a sufficient witness under old law.

Under the Statute of Frauds, a person taking any interest under a will was considered not to be a credible witness, and consequently a will was invalid if any one of the three attesting witnesses took any beneficial interest under it. Under the Wills Act, a

Legacy to witness void.

(*r*) West *v.* Ray, Kay, 392; Taylor *v.* Meads, 34 L. J. Ch. 203.

(*s*) *Re* Daly's Settlement, 25 Beav. 456.

(*t*) 15 & 16 Vict. c. 24.

(*u*) Vinnicombe *v.* Butler, 34 L. J. Prob. 18.

(*x*) Croft *v.* Croft, 34 L. J. Prob. 44.

legacy or other benefit given to an attesting witness, or to his or her wife or husband, is void, but the will is in other respects good, and the legatee, &c., is an admissible witness (*y*).

Creditor or executor a competent witness.

A creditor (when the will contains a charge of debts) may be an attesting witness, and so also may an executor (*z*).

Where one of a class is an attesting witness.

Where there is a gift to a class as joint tenants, and one of the class is an attesting witness, the joint tenancy is not severed, but the whole goes to the other members of the class (*a*).

Legacy to attesting witness when rendered valid by subsequent codicil.

A legacy given by a will to an attesting witness is rendered valid by a codicil confirming the will attested by other witnesses (*b*). But if a testator makes first a will, secondly, a codicil giving a legacy to a person who is an attesting witness to such codicil, and thirdly, a second codicil which refers to the will but takes no notice of the first codicil, the legacy given by the first codicil remains invalid (*c*).

By what local law the execution of wills must be regulated.

A will disposing of land of any tenure (*d*) must be executed and construed according to the law of the country in which the property is situate, whatever may be the domicile of the testator. But a will of moveable estate must be executed and construed according to the law of the country in which the testator is domiciled, subject, however, to the provisions of a recent Act, commonly called Lord Kingsdown's Act (*e*). By this Act it is provided that every will or testamentary instrument made out of the United Kingdom by a British subject (whatever may be the domicile of such person at the time of making the same, or at the time of his death) shall, as regards personal estate, be held to be well executed for the purpose of being admitted in England and Ireland to probate, and in Scotland to confirmation, if the same

Lord Kingsdown's Act.

A will made abroad by a British subject to be admitted to probate here, if executed according to law of place where made.

(*y*) Sect. 15.
(*z*) Sects. 16 and 17.
(*a*) Young *v.* Davies, 2 Drew. & Sm. 167.
(*b*) Anderson *v.* Anderson, L. R. 13 Eq. 381.
(*c*) Burton *v.* Newbury, 1 C. D. 234.
(*d*) As to leasehold land, see Duncan *v.* Lawson, 41 C. D. 394.
(*e*) 24 & 25 Vict. c. 114.

be made according to the forms required either by the law of the place where the same was made, or by the laws then in force in that part of Her Majesty's dominions where he had his domicile of origin (*f*). The Act further provides that every will, &c., made within the United Kingdom by any British subject (whatever may be the domicile of such person at the time of making the same or at his death) shall, as regards personal estate, be held to be well executed, and shall be admitted to probate, &c., if the same be executed according to the laws for the time being in force in that part of the United Kingdom where the same is made (*g*); and that no will, &c., shall be held to be revoked, or to have become invalid, nor shall the construction thereof be altered, by reason of any subsequent change of domicile of the person making the same (*h*).

Power to her Majesty to make arrangements with foreign state as to domicile.

And by another Act (*i*) it is provided that whenever a convention to that effect is made with a foreign state, her Majesty may by Order in Council direct that a British subject resident in the foreign country shall not be deemed to have acquired a domicile for testamentary purposes or purposes of succession to moveables, unless he has been resident in such foreign country a year, and has deposited in a public office there a declaration in writing of his intention to become domiciled there: and corresponding provisions are enacted as to subjects of foreign states dying in Great Britain.

Real estate in Scotland will pass by English will.

Since the Act 31 & 32 Vict. c. 101, real estate in Scotland may be disposed of by a will made and executed with the formalities required by English law (*j*).

Effect of marriage as a revocation.

Previously to the Wills Act the will of a woman was revoked by marriage, and the will of a man was in most cases revoked by marriage *and* the birth of a child, but not by marriage alone.

(*f*) Sect. 1.
(*g*) Sect. 2.
(*h*) Sect. 3. See *In re* Reid, 1 L. R. Prob. 74.
(*i*) 24 & 25 Vict. c. 121.
(*j*) Sect. 20; Connell's Trustees *v.* Connell, 10 Court of Session Reports (3rd series), p. 627.

Every will made since the Wills Act is revoked by marriage, except a will made in exercise of a power of appointment, when the real or personal estate thereby appointed would not, in default of such appointment, pass to the heir, customary heir, executor, or administrator, or the person entitled as next of kin under the Statute of Distributions (*k*). A will or codicil may also be revoked by another will or codicil duly executed, or by the burning, tearing, or otherwise destroying the same by the testator, or by some person in his presence and by his direction, with the intention of revoking the same (*l*), and no obliteration, interlineation, or other alteration will have any effect unless such alteration is executed in like manner as is required for the execution of the will; but the will, with such alteration as part thereof, will be deemed to be duly executed if the signature of the testator and the subscription of the witnesses be made in the margin, or in some other part of the will opposite or near to such alteration, or at the foot or end of or opposite to a memorandum referring to such alteration, and written at the end or some other part of the will (*m*).

Will may be revoked by another will or burning, &c.

Interlineation, &c. must be executed.

No revoked will or codicil can be revived, otherwise than by the re-execution thereof, or by a codicil showing an intention to revive the same, and if any will or codicil which is partly revoked and afterwards wholly revoked is revived, such revived will, will not extend to so much thereof as shall have been revoked before the revocation of the whole thereof, unless an intention to the contrary shall be shown (*n*).

How revoked will may be revived.

If a person makes a second will, revoking the first, and then destroys or otherwise revokes the second, the first is not thereby revived.

Where a will is destroyed, the presumption is that the act was done *animo revocandi*, but this presumption may be repelled by evidence that such animus did not exist. If a will is destroyed or torn with the intention of setting up some other testamentary instrument, the

Dependent relative revocation.

(*k*) 1 Vict. c. 26, s. 18.
(*l*) Sect. 20.
(*m*) Sect. 21.
(*n*) Sect. 22.

act of destruction will be a revocation in case only the testamentary instrument intended to be thereby set up proves efficacious. The revocation in such case is called a dependent relative revocation

Thus, where a man made a second will, slightly differing from the first, but which second will was invalid for want of a proper attestation, and the testator, after making such second will, cancelled the first by tearing off the seal, it was held that such cancellation being made under the mistaken notion that the second will was effectual was not a revocation (*o*). And in another case where a testator, after having made two successive wills, the second revoking the first, destroyed the second, erroneously supposing that in so doing he was reviving the first, it was held that the second will was not revoked (*p*).

II. *As to the time from which a will speaks, what property passes under a general devise and bequest, and what words are sufficient to carry the fee simple.*

Every devise of real estate was formerly specific.

Formerly every devise of freehold and copyhold lands included only such property as the testator was seised of or entitled to at the date of the will, and a devisee of copyholds had no devisable estate before admittance (*q*). Whenever therefore a will contained a general devise, and lands were subsequently acquired by the testator which he wished to be included in such devise, it was necessary for him to republish his will, or make a codicil; but in the case of copyholds, a surrender to the use of the testator's will operated as a republication of the will so as to include the after-acquired copyholds in the previous general devise (*r*).

Operation of a general bequest of personalty.

On the other hand, a general bequest of personal estate embraced all the personalty of which the testator was possessed at the time of his death, the will for this purpose speaking from the death of the testator.

(*o*) Onions *v.* Tyrer, 2 Vern. 742.
(*p*) Powell *v.* Powell, 1 L. R. Prob. 209.
(*q*) Wainright *v.* Elwell, 1 Madd. 627.
(*r*) Sug. V. & P. 155.

Effect of disturbance of testator's estate after date of will.

One of the consequences of the above-mentioned doctrine with regard to real estate was, that any disturbance of the devised estate between the date of the will and the testator's death operated as a revocation —as, for instance, the entering into a binding contract for sale, although it afterwards might be rescinded or abandoned (*s*); a conveyance, although its effect might be to re-vest the property immediately in the testator, so that he should be in of his old use; the surrender of a lease for lives in consideration of a new lease (*t*); the reconveyance of land in mortgage to the testator to uses to bar dower where the proviso in the mortgage was for the reconveyance to him, his heirs and assigns (*u*); or the taking a conveyance by the testator to uses to bar dower of property previously to the will contracted to be purchased by him, where the contract did not provide for the form in which the property should be conveyed to the purchaser (*x*).

Under Wills Act, conveyance after will does not prevent its operating on testator's interest at death.

It is now provided by the 23rd section of the Wills Act, that "no conveyance or other act made or done subsequently to the execution of a will of or relating to any real or personal estate therein comprised, except an act by which the will shall be revoked as aforesaid, shall prevent the operation of the will with respect to such estate or interest in such real or personal estate as the testator shall have power to dispose of by will at the time of his death."

Rule of equity as to conversion not affected.

The 23rd section does not affect the rule of equity which treats property agreed to be sold as personalty; so that if land devised by a will is afterwards contracted to be sold, but the sale is not effected in the lifetime of the testator, the purchase-money belongs to his personal representatives, and not to the devisee (*y*); and this is

(*s*) Tebbott *v.* Voules, 6 Sim. 40; Andrew *v.* Andrew, 8 De G. M. & G. 336.

(*t*) Poole *v.* Coates, 2 Dru. & War. 493.

(*u*) Plowden *v.* Hyde, 2 De G. M. & G. 684.

(*x*) Ward *v.* Moore, 4 Madd. 368. See also Bigg *v.* Watt, 4 W. Rep. 786.

(*y*) Farrar *v.* Earl Winterton, 5 Beav. 1; Moor *v.* Raisbeck, 12 Sim. 123; *In re* Manchester and Southport Railway Company, 19 Beav. 365.

the case even when the devise is to a trustee upon trust for sale (*z*).

Will now speaks from death as to realty as well as personalty, unless a contrary intention appears.

The 24th section provides that every will shall be construed, with reference to the real and personal estate comprised therein, to speak and take effect as if it had been executed immediately before the death of the testator, unless a contrary intention appears by the will (*a*), so that a general devise of the testator's lands will embrace not only those lands which he is entitled to, or has power over, at the date of his will, but all his after-acquired estates—and a copyholder has now a devisable estate before admittance.

What is sufficient evidence of a contrary intention.

In *Cole* v. *Scott* (*b*), a devise of all the lands whereof "I am now seised" was held not to pass lands acquired after the date of the will; but this decision must be considered as depending not only on the use of the word "now," but on other expressions in the will which seemed to show an intention on the part of the testator to exclude after-acquired lands. It has been held that a devise of all the lands of which "I am seised" includes after-acquired lands (*c*); and that a devise of all the lands of which "I am seised," in a particular place, passes lands in that place subsequently acquired (*d*); so also a devise of a house in which "A. now resides, with the stables and appurtenances thereto belonging," was held to pass a piece of land which the testator had subsequently acquired and converted into a garden which he had attached to the house, so that the house and garden were occupied together up to the testator's death (*e*); and under a devise of "my estate called the C. estate," lands subsequently acquired and added to the estate were held to pass (*f*).

In *Douglas* v. *Douglas* (*g*), the Vice-Chancellor said, "I can imagine that, under the new statute, a gift of

(*z*) Gale *v.* Gale, 21 Beav. 349.
(*a*) Sect. 24.
(*b*) 1 M. & G. 518.
(*c*) Doe *v.* Walker, 12 M. & W. 590; Lady Langdale *v.* Briggs, 8 De G. M. & G. 391.
(*d*) Lord Lilford *v.* Keck, 30 Beav. 300.
(*e*) *Re* The Otley and Ilkley Railway Company, 11 Jur. N. S. 818.
(*f*) Castle *v.* Fox, L. R. 11 Eq. 542.
(*g*) 1 Kay, 400.

'all my stock' would pass all stock to which the testator was entitled at the time of his death. But suppose the bequest were of 'all my stock which I have purchased,' that would make a considerable difference, and would, I think, be enough to show that the testator was defining the particular portion of property which he intended to give as being property then in his possession."

Instances of specific gifts held to include after-acquired property.

A bequest of "my New $3\frac{1}{4}$ per Cent. Annuities" was held to comprise all the New $3\frac{1}{4}$ per Cents. which the testatrix had at her death (*h*). V.-C. Wood in this case said, "If I refer to a particular thing, *e. g.*, a ring or a horse, and bequeath it as 'my ring,' or 'my horse,' it would seem that the contrary intention to which the 24th section refers 'appears by the will,' and the will speaks from the date of its execution; but when a bequest is of that which is generic, of that which may be increased or diminished, the Act requires something more on the face of the will for the purpose of indicating such 'contrary intention' than the mere circumstance that the subject of the bequest is designated by the pronoun 'my.'" In another case, a testator bequeathed to his brother "all the shares which I now possess in the Union Bank in Calcutta." After the date of the will, and before his death, his property in the company's funds largely increased, and it was held that the whole of the property passed under the will (*i*). Again, where a testator gave "all my money, bank and other shares, freehold property, plate, pictures, coins, books, and any other property that I may now possess," it was held that after-acquired personalty passed under the bequest (*k*). Again, where property being leasehold at the date of the will was bequeathed as leasehold to specific devisees, and the testator afterwards acquired the reversion in fee simple, it was held that the fee simple passed by the specific

(*h*) Goodlad *v.* Burnett, 1 K. & J. 341.

(*i*) Hepburn *v.* Skirving, 4 Jur. N. S. 651. See also Pierce *v.* Harrison, 25 L. T. 264; Stilwell *v.* Mellersh, 20 L. J. Ch. 356; O'Toole *v.* Browne, 23 L. T. 111; Webb *v.* Byng, 1 K. & J. 580; Rothes *v.* Salomons, 15 Jur. 483.

(*k*) Wagstaff *v.* Wagstaff, L. R. 8 Eq. 229.

devise, and not under a residuary devise in the same will (*l*).

Under old law general devise did not *primâ facie* include leaseholds or property over which testator had a power of appointment.

Previously to the Wills Act a general devise of land included neither leasehold land nor land of any tenure over which the testator had a mere power of appointment, except in those cases in which he had no other land at the date of the will upon which the will could operate (*m*), or unless an intention was to be clearly gathered from the will to dispose of the leaseholds, or to exercise the power under the general devise; and in the absence of an intention to exercise the power a general bequest did not operate as an execution of general powers over personalty.

Rule altered by Wills Act.

By sect. 26 of the Wills Act it is enacted, that a devise of the land of the testator, or of the land of the testator in any place, or in the occupation of any person mentioned in his will, or otherwise described in a general manner, and any other general devise which would describe a customary, copyhold, or leasehold estate, if the testator had no freehold estate which could be described by it, shall be construed to include the customary, copyhold, and leasehold estates of the testator, or his customary, copyhold, and leasehold estates, or any of them, to which such description shall extend, as the case may be, as well as freehold estates, unless a contrary intention shall appear by the will.

Whether leaseholds will pass under devise of real estate.

It follows, from the above enactment, that a general devise of *land* will now pass leaseholds and copyholds as well as freeholds. In a recent case it was held that leaseholds passed under a devise of the testator's real estate in a particular place (*n*): but a general devise of real estate without any reference to locality does not pass leaseholds (*o*).

Effect under Wills Act of general devise as to property which testator has power to appoint.

The 27th section provides, that a general devise of the real estate of the testator, or of the real estate of the testator in any place, or in the occupation of any person mentioned in his will, or otherwise described in

(*l*) Miles *v.* Miles, L. R. 1 Eq. 462; Cox *v.* Bennett, *ib.* 6 Eq. 422; Saxton *v.* Saxton, 13 C. D. 359.

(*m*) Rose *v.* Bartlett, Cro. Car. 293; Gully *v.* Davis, L. R. 10 Eq. 562; 1 Jarm. on Wills, 4th ed. 668—687.

(*n*) Moase *v.* White, 3 C. D. 763.

(*o*) Butler *v.* Butler, 28 C. D. 66.

a general manner, shall be construed to include any real estate, or any real estate to which such description shall extend (as the case may be), which he may have power to appoint in any manner he may think proper, and shall operate as an execution of such power, unless a contrary intention shall appear by the will; and in like manner a bequest of the personal estate of the testator, or any bequest of personal property described in a general manner, shall be construed to include any personal estate, or any personal estate to which such description shall extend (as the case may be), which he may have power to appoint in any manner he may think proper, and shall operate as an execution of such power, unless a contrary intention shall appear by the will.

Power given to survivor may be exercised by will of person who afterwards becomes survivor.

A general power given to the survivor of several persons may be exercised by a general devise in a will executed by the ultimate survivor during their joint lives; and in a case where such a power was vested in A. B., and C., and C., who was a married woman, ultimately became the survivor, it was held that the power was well exercised by a residuary devise in the will of C. made by her while under coverture, and during the life of B. (*p*).

Effect of residuary gift with regard to property subject to power.

A gift by will of the residue of a testator's estate passes property over which the testator has, at the date of the will, a general power of appointment, and also property over which he acquires such a power after the date of his will (*q*). And it has been held that the words, "I constitute A. B. my residuary legatee," mean the same as a general gift to A. B. of the residue, and consequently operates as an appointment in his favour under a general power (*r*). In a late case, a testatrix, having a general power of appointment over a trust fund, made a will, giving pecuniary legacies and appointing executors, but the will made no reference whatever to the trust fund or to the power, and

(*p*) Thomas *v.* Jones, 2 J. & H. 475; S. C. on appeal, 1 De G. J. & S. 63.

(*q*) Stillman *v.* Weedon, 16 Sim. 26; Patch *v.* Shore, 2 Dr. & Sm. 589; Boyes *v.* Cook, 14 C. D. 53.

(*r*) Spooner's Trust, 2 Sim. N. S. 129.

contained no residuary bequest. It turned out that the assets of the testatrix other than the trust fund were insufficient to pay the legacies, and Vice-Chancellor Stuart held, that the bequests of the legacies were bequests of personal property, "described in a general manner," within the meaning of the 27th section, and that such legacies were payable out of the trust fund subject to the power (*s*). And it has also been held that a direction to the executors to pay the debts out of the testator's personal estate makes property over which he has a power of appointment part of his general assets (*t*).

An appointment by will makes fund part of testator's estate.

An appointment by will under a general power makes the appointed property (whether real (*u*) or personal) part of the testator's general estate, although some of the objects may fail by lapse or otherwise, and consequently a general devise or bequest has the same operation (*v*).

Power requiring express reference to it.

A power to appoint by a will "expressly referring to this power" is not well exercised by a general bequest in a will not referring to the power (*x*).

Act does not apply to special powers.

The 27th section does not apply to special powers, *i.e.*, powers exerciseable in favour of particular objects only. Consequently a general devise of all the testator's property is not an execution of such a power (*y*), even though he has no real estate of his own at the date of his will (*z*). The power, or the property which is the subject of it, must be referred to. Where the will contains only a general reference to the testator's powers, as where a devise or bequest is expressed to be made in pursuance of all powers vested in the testator, or is of all the property over which he has any power of appointment, it is a question of intention to be collected from the whole of the instrument whether

In what cases a special power will be executed by general devise.

(*s*) Hawthorn *v.* Shedden, 3 Sm. & G. 293; *Re* Wilkinson's Trusts, L. R. 8 Eq. 487.

(*t*) Wilday *v.* Barnett, L. R. 6 Eq. 193.

(*u*) *Re* Van Hagan, 16 C. D. 18.

(*v*) *Re* Pinédé's Settlement, 12 C. D. 667.

(*x*) Phillips *v.* Cayley, 43 C. D. 222; *In re* Davies, (1892) 3 Ch. 63.

(*y*) Cloves *v.* Audry, 12 Beav. 604.

(*z*) The rule which prevailed before the Wills Act, that a general devise of real estate passed property subject to a special power where the testator had no other land, is inapplicable to wills since that Act. *In re* Mills, 34 C. D. 186; *Re* Williams, 42 C. D. 93.

such a devise operates as an execution of a special power. It will be so held, if the gift is wholly or substantially in favour of persons who are objects of the power (*a*), even though the power is to some extent exceeded. Thus, where the bequest was to trustees in trust to pay debts and divide the residue among objects of the power, the power was held to be executed, notwithstanding the trust to pay debts (*b*). Again, where the bequest was to an object for life with remainder in favour of his children, such children not being objects, the life estate was held to be well appointed (*c*). And in the converse case a power to give a life interest in a fund to the donee's wife was held well executed by a will which gave all the property over which the testator had any power of appointment to the wife absolutely (*d*).

Trust and mortgage estates when included in a general devise, where testator died before 1882.

A general devise in the will of a person who has died before the 1st January, 1882, includes estates vested in the testator as a trustee or mortgagee, unless a contrary intention can be inferred from expressions in the will or the purposes and objects of the testator (*e*). Thus, a devise of the testator's property to A. absolutely, clearly passes trust and mortgaged estates (*f*); and in a case where a testator devised all his property to his wife, her heirs, executors, administrators, and assigns, "for all my estate and interest therein, to and for her own absolute use and benefit, and to be disposed of by her by deed, will, or otherwise as she

(*a*) Bailey *v.* Lloyd, 5 Russ. 330; Pidgely *v.* Pidgely, 1 Coll. 255; Cowx *v.* Foster, 1 J. & H. 30; Ferrier *v.* Jay, L. R. 10 Eq. 550; *In re* Swinburne, 27 C. D. 696; Von Brockdorff *v.* Malcolm, 30 C. D. 172. For a case where power was held not to be exercised, see *In re* Cotton, 40 C. D. 41.

(*b*) Cowx *v.* Foster, Ferrier *v.* Jay, *Re* Swinburne, *ubi supra*.

(*c*) Pidgely *v.* Pidgely, 1 Coll. 255.

(*d*) *Re* Teape's Trust, L. R. 16 Eq. 442; Thornton *v.* Thornton, *ib.* 20 Eq. 599.

(*e*) Lord Braybroke *v.* Inskip, 8 Ves. 417. Until this case the rule seems to have been unsettled. See Duke of Leeds *v.* Munday, 3 Ves. 348; *Ex parte* Sergison, 4 Ves. 147; Attorney-General *v.* Buller, 5 Ves. 341; *Ex parte* Brettel, 6 Ves. 577; and the observations of the Court on those cases in Lord Braybroke *v.* Inskip, 8 Ves. pp. 433—435.

(*f*) Marlow *v.* Smith, 2 P. W. 197; Lord Braybroke *v.* Inskip, *ubi supra;* Sharpe *v.* Sharpe, 12 Jur. 508.

may think fit," it was held that trust estates passed under such devise (*g*). And according to another case trust estates pass under a devise to a woman for *her sole use* (*h*).

If property has been devised by a person who has died before the 1st January, 1882, upon trust for sale (*i*), or charged with debts (*k*) or annuities (*l*), or with a gross sum (*m*), or to uses in strict settlement (*n*), trust estates do not pass, as the nature of the disposition sufficiently indicates that the testator did not intend to include any property beyond that in which he was beneficially interested. And for the same reason a devise to an unascertained class, *e.g.*, to all the testator's nephews and nieces, do not include trust or mortgaged estates (*o*).

Whether a gift of "securities for money," &c., passes legal estate of mortgaged property.

In the absence of a contrary intention, a gift of "mortgages," or "securities for money," in the will of a person who has died before the 1st January, 1882, passes not only the money secured, but also the legal estate in the mortgaged property, although the words may be placed among words relating to personal estate only, or the gift may be to the donee, his *executors*, *administrators*, *or assigns*, and not to his *heirs*, and although the gift may be subject to debts and legacies, or upon trusts for sale and conversion (*p*). But a bequest of *money on securities* does not carry the legal estate in the mortgaged property (*q*).

(*g*) Lewis *v.* Matthews, L. R. 2 Eq. 177; *Ex parte* Shaw, 8 Sim. 159.

(*h*) Lindsell *v.* Thacker, 12 Sim. 178, is apparently overruled. See Gilbert *v.* Lewis, 1 De G. J. & S. 38.

(*i*) *Ex parte* Marshall, 9 Sim. 555.

(*k*) Roe d. Reade *v.* Reade, 8 Durn. & E. 118.

(*l*) Duke of Leeds *v.* Munday, 3 Ves. 348; *Ex parte* Morgan, 10 Ves. 101.

(*m*) Rackham *v.* Siddall, 16 Sim. 297; Hope *v.* Liddell, 21 Beav. 183.

(*n*) Co. Litt. 203 b, note 96.

(*o*) *Re* Finney's Estate, 3 Giff. 465. See also Martin *v.* Laverton, L. R. 9 Eq. 563.

(*p*) Renvoize *v.* Cooper, 6 Mad. 371; *In re* King's Mortgage, 5 De G. & Sm. 644; *In re* Field's Mortgage, 9 Hare, 414; *In re* Walker's Estate, 21 L. J. Ch. 674; Knight *v.* Robinson, 2 K. & J. 503; Rippen *v.* Priest, 32 L. J. C. P. 65.

(*q*) *Ex parte* Cautley, 17 Jur. 124; 22 L. J. Ch. 391. In Doe d. Guest *v.* Bennett, 6 Exch. 892, it was held that a devise in these words, "I leave my wife R. H. to receive all moneys upon mortgages," gave her the legal estate in the mortgaged premises; but

A devise in such a will of the residue of a testator's estate, following a direction to pay debts or a bequest of legacies, includes estates vested in a testator as mortgagee in his own right (*r*); but the question whether it includes estates vested in him as a trustee has been the subject of conflicting decisions. Jessel, M. R., has decided that it does not (*s*), and Malins, V.-C., that it does (*t*).

Residuary devise following a direction to pay debts, or legacies, passes estates held on mortgage, but whether it passes trust estates, *quære*.

The rule that a general devise passes trust estates unless a contrary intention can be inferred, applies to land which a testator has contracted to sell, the sale being uncompleted at his death. In *Wall* v. *Bright* (*u*), a testator after a contract for sale devised all his lands to trustees in trust for sale, and it was held that the land comprised in the contract passed by the devise. In *Thirtle* v. *Vaughan* (*v*), a testator after specific devises gave the residue of his estate to his three children as tenants in common, subject to a gift over as to the share of any child dying under twenty-one. After the date of the will the testator contracted to sell some land, and the Court held that such land did not pass by the will. These two decisions must be reconciled on the ground that in the former case a trust for sale was not considered inconsistent with an intention that the devisee in trust should take the subject of an uncompleted contract, whereas the executory devise in the latter was thought inconsistent with such intention.

Rule applies to lands contracted to be sold.

In both the above cases there was no express devise of estates vested in the testator as a trustee or mortgagee, and the only question was whether the land passed by the general devise or devolved on the heir-at-law. It has been lately decided that where a will contains a devise of a testator's general estate, and also a devise of estates vested in him as a trustee or mort-

Land contracted to be sold passes under an express devise of trust and mortgage estates.

the decision seems to have been disapproved of by Kindersley, V.-C., in *Ex parte* Cautley. See also *Re* Arrowsmith's Trusts, 4 Jur. N. S. 642.

(*r*) *Re* Stevens, L. R. 6 Eq. 597. See also *Re* Packman and Moss, 1 C. D. 214.

(*s*) *Re* Smith's Estate, 4 C. D. 70; *Re* Bellis's Estate, 5 C. D. 504.

(*t*) Brown and Sibly's Contract, 3 C. D. 156.

(*u*) 1 J. & W. 494.

(*v*) 2 W. R. 632.

gagee, land contracted to be sold passes by the latter (not the former) devise (*x*).

Devolution of trust and mortgage estates on death of a person since 1881.

With regard to persons dying after the 31st December, 1881, it is provided by the Conveyancing Act, 1881 (*y*), that where an estate or interest of inheritance, or limited to the heir as special occupant, in any tenements or hereditaments, corporeal or incorporeal, is vested on any trust, or by way of mortgage, in any person solely, the same shall, on his death, notwithstanding any testamentary disposition, devolve to and become vested in his personal representatives or representative from time to time. But by a subsequent Act it is provided that this section shall not apply to any land of copyhold or customary tenure vested in the tenant on the court rolls of any manor upon any trusts or by way of mortgage (*z*). It follows that (subject to the above exception) a devise of estates vested in a testator as trustee or mortgagee now passes nothing.

Effect of devise without words of limitation under old law.

Prior to the Wills Act, a devise of land without words of limitation conferred an estate for life only on the devisee. But an indefinite devise was frequently enlarged into a fee simple whenever an intention to dispose of such larger estate could be collected from the language of the will. Thus, if a devise was made on condition that the devisee should pay the testator's debts or certain annuities or legacies, or a particular sum, so as to make the satisfaction of such sums the personal obligation of the devisee, he took an estate in fee simple, on the ground that if he only took an estate for life he might be a loser by such gift (*a*). The devisee also took an estate in fee simple if the devise to him was followed by a gift over on his dying under twenty-one (*b*). Again, a devise of the testator's estate generally, or of his estate in a particular

What was sufficient to carry the fee simple.

(*x*) Lysaght *v.* Edwards, 2 C. D. 499.

(*y*) Sect. 30.

(*z*) 50 & 51 Vict. c. 73 (Copyhold Act, 1887), s. 45. It has been held that this enactment divests out of the personal representative any legal estate in copyholds which has devolved on him under sect. 30 of the Conveyancing Act. *In re* Mill's Trusts, 37 C. D. 312.

(*a*) Doe *v.* Holmes, 8 T. Rep. 1; Goodright *v.* Stocker, 5 T. R. 13; Goodtitle *v.* Maddern, 4 Ea. 496.

(*b*) Doe *v.* Cundall, 9 Ea. 400.

place (*c*), or by a particular name (*d*), or description (*e*), carried the fee. The words "remainder," "reversion," "property," "inheritance," "right," "title," &c., &c., were also terms generally sufficient to carry the fee (*f*).

Effect of similar devise since Wills Act.

Under the Wills Act, a devise of real estate *without words of limitation* operates to pass the fee simple or other the whole estate or interest which the testator had power to dispose of, unless a contrary intention appears by the will (*g*).

III. *In what cases trustees take the legal estate under a devise, and as to the extent of their estate.*

Question whether trustees take legal estate; upon what it depends.

Where property is limited by will *to the use* of trustees, the legal estate vests in them by force of the words employed (*h*); but if the devise is to them to the use of or in trust for other persons, the question whether they take the legal estate depends on whether they have any duties to perform which require that they should take it. And when it has been thus ascertained that they take *some* estate, a question often arises as to the duration of such estate. As regards wills governed by the old law, the rule is that a devise to trustees which does not expressly limit the duration of the estate gives them an interest commensurate with the trusts to be performed. But as regards wills made since the Wills Act the rule has been modified by the 30th and 31st sections of the Act, which provide that where any real estate (other than or not being a presentation to a church) is devised to any trustee or executor, such devise shall be construed to pass the fee simple or other the whole estate or interest which the testator had power to dispose of by will in

(*c*) Barry *v.* Edgworth, 2 P. Wms. 522.
(*d*) Chichester *v.* Oxenden, 4 Taunt. 176.
(*e*) Roe d. Child *v.* Wright, 7 East, 259; Harding *v.* Gardiner, 1 Br. & B. 72; Paris *v.* Miller, 5 M. & S. 408.
(*f*) 2 Jarm. Wills, 4th ed. 274 *et seq.*
(*g*) Sect. 28.
(*h*) 2 Jarm. Wills, 289.

such real estate, unless a definite term of years absolute or determinable or an estate in freehold is thereby given to him expressly or by implication: and that where any real estate is devised to a trustee without any express limitation of the estate to be taken by such trustee, and the beneficial interest in such real estate or in the surplus rents and profits thereof is not given to any person for life, or such beneficial interest shall be given to any person for life, but the purposes of the trust may continue beyond the life of such person, such devise shall be construed to vest in such trustee the fee simple or other the whole legal estate which the testator had power to dispose of by will, in such real estate, and not an estate determinable when the purposes of the trust shall be satisfied.

Cases in which trustees have been held to take legal estate.

A devise to trustees upon trust, or to the intent that they shall receive the rents and pay them to A. (*i*), or upon trust to pay out of the rents, after deducting rates, taxes, and repairs, such clear sum as should remain to A. (*k*), or to permit the devisee to receive the *net* rents (*l*), vests the legal estate in the trustees.

But under a devise to A. upon trust to permit B. to receive the rents (*m*), or to pay unto or permit B. to receive the rents (*n*), or to receive the rents and pay the same to B., or otherwise permit him to receive the same (*o*), the legal estate vests in B., and A. takes no estate. But under a devise (prior to the Married Women's Property Act, 1882) to a trustee to permit a *feme covert* to receive the rents for her separate use, the trustee takes the legal estate, as otherwise the rents would be receivable by the husband, which could not have been the testator's intention (*p*). And when there are several trusts for the separate use of married women during their lives, separated by intervening limitations which if taken alone would vest the legal

(*i*) Doe *v.* Homfray, 6 Ad. & El. 206.

(*k*) Shapland *v.* Smith, 1 B. C. C. 74.

(*l*) Barker *v.* Greenwood, 4 M. & W. 421.

(*m*) Right d. Phillips *v.* Smith, 12 East, 455.

(*n*) Doe d. Leicester *v.* Biggs, 2 Taunt. 109.

(*o*) Baker *v.* White, L. R. 20 Eq. 166.

(*p*) 2 Jarm. on Wills, 294.

estate in the persons beneficially interested thereunder, the legal estate will be held to be vested in the trustees throughout, and the intervening estates are equitable only (*q*).

Where trustees are directed to convey.

Trustees will take the legal fee when by the will they are directed to convey to a third person (*r*).

Devise to trustees in trust to pay annuities, &c.

In wills under the old law a devise to trustees in trust to pay annuities, and subject thereto in trust for A., gives the trustees an estate during the lives of the annuitants; and a devise to trustees in trust to apply the rents for the maintenance of A. until he attains twenty-one, and then to A. absolutely, gives the trustees an estate during A.'s minority only, but in both these cases the trustees would take the entire fee simple under a will made since the Wills Act.

A trust to raise money by sale or mortgage gives the trustees the legal estate.

Where land is devised to trustees in trust to raise money by sale or mortgage for payment of the testator's debts, or such of his debts as his personal estate will not satisfy (*s*), or upon trust to demise or let the same (*t*), and subject to such trusts the land is directed to be held in trust for other persons, or is given directly to other persons, the trustees take the legal estate whether the will is under the old or the new law.

So also does a power, whether express or implied, from a direction to pay debts.

So also they take the legal estate under a devise upon trusts which, taken alone, would not have that effect, if such devise is followed by a power enabling them to raise money by sale or mortgage for payment of debts (*u*), and the result is the same, if the power arises by implication, as where there is a direction that the debts shall be paid by the executors, who are also the trustees (*x*); and a mere direction for payment of debts without saying by whom, followed by a devise to trustees who are also the executors, has the same effect (*y*).

(*q*) Harton *v.* Harton, 7 T. R. 652; Brown *v.* Whiteway, 8 Hare, 145. See also Doe d. Waller *v.* Claridge, 6 C. B. 641.

(*r*) Garth *v.* Baldwin, 2 Ves. sen. 646.

(*s*) Bagshaw *v.* Spencer, 1 Ves. sen. 142; Gibson *v.* Lord Montford, *ib.* 485.

(*t*) Doe *v.* Willan, 2 B. & Ald. 84.

(*u*) Doe d. Cadogan *v.* Ewart, 7 Ad. & El. 637; Doe *v.* Davis, 1 Q. B. 430; 10 L. J. Q. B. 169.

(*x*) Spence *v.* Spence, 31 L. J. C. P. 189.

(*y*) Creaton *v.* Creaton, 3 S. & G.

Effect of power of leasing being given to trustees.

If the words of a will made under the old law were otherwise sufficient to carry the fee to the trustees, the fact that they were empowered to grant leases afforded an argument of weight in favour of their being construed so as to confer the whole legal fee on the trustees; but it was not conclusive, and when the testator's intention could be effected by holding that the trustees had an estate during the continuance of the trusts of the will, with a power to lease while the estate vested in them for the purpose of the trust continues, the devise was so construed (*z*).

When executors take the legal estate.

Executors take the legal estate, although there is no gift in terms to them, if it is evident on the face of the will that they are to sell and distribute the whole of the testator's property (*a*).

Under Wills Act, trustees take either a life estate or a fee.

The effect of the 30th and 31st sections of the Wills Act appears to be that if there is no express limitation of the estate to be taken by the trustee, and yet there are purposes which require that he should take *some* estate, he must take either an estate for life or an estate in fee simple. For instance, a devise to A. in trust to permit B. to receive the rents for life, with remainder to C., would vest no estate in the trustee, as there are no purposes requiring him to take any estate; a devise to A. in trust to pay the rents to B. for life, with remainder to C., would vest the legal estate in the trustee for the life of B. only; while a devise to A. in trust to accumulate the rents for ten years for a particular purpose, and subject thereto in trust for B., would vest the legal fee in A., as the purposes of the trust require that the trustee should take some estate, but there is no *express* limitation of the estate to be taken by him, and the beneficial interest is not given to any person for life (*b*).

386; Marshall *v.* Gingell, 21 C. D. 790. Kendrick *v.* Beauclerk, 3 Bos. & Pull. 175, if inconsistent with the above decisions, must be considered as overruled.

(*z*) Doe d. Keen *v.* Wallbank, 2 B. & Ad. 554; Doe d. Kimber *v.* Cafe, 7 Exch. 675; Blagrave *v.* Blagrave, 4 Exch. 550.

(*a*) Davies to Jones, 24 C. D. 190.

(*b*) 2 Jarm. on Wills, 4th ed. p. 321; Hawkins on the Construction of Wills, p. 157.

Application of rule to copyholds or leaseholds.

The rule which (subject to the modifications introduced by the Wills Act) limits the estate of the trustees under an indefinite devise to one commensurate with the trusts to be performed, applies to copyholds and leaseholds. Thus, a devise of copyholds to A. and his heirs in trust for B. and his heirs, or in trust for B. for life, and at his death in trust for C. and his heirs, gives A. the legal estate in the whole customary fee, because copyholds are not within the Statute of Uses: but if the devise be to A. and his heirs in trust for B. for life and after his death *to* (not in trust for) C. and his heirs, A. takes an estate for the life of B. only, with a legal remainder on the death of B. to C. (*c*); and in like manner a bequest of leaseholds to A. in trust for B. gives A. the whole term, but under a bequest to A. in trust for B. for life, and after B.'s death *to* C., it is apprehended (*d*) that A. takes the term, subject to an executory bequest in favour of C. to take effect on B.'s death.

IV. *Legacies, general and specific, vested and contingent, gifts to children, next of kin, &c.*

Definition of a general legacy.

Legacies are either general or specific. A general legacy is a gift of money or something else to be paid, raised, or procured out of the testator's personal estate generally, and is not necessarily a part of such estate. Thus, a gift of £100 money or £100 stock is a good legacy, although the testator may have no cash or no stock at his death, and in such a case his executors must raise or buy it out of whatever property he may leave. A specific legacy is a gift of some specified part of the testator's property, as a gift of "all my furniture," or "all the furniture that I may leave at my death," or "all my shares and stock in a railway company," and such a gift will include whatever

Definition of a specific legacy.

(*c*) Doe d. Woodcock *v.* Barthrop, 5 Taunt. 382; Baker *v.* White, L. R. 20 Eq. 166.

(*d*) Stevenson *v.* Mayor of Liverpool, L. R. 10 Q. B. 81.

property of the kind described the testator may leave at his death. But the thing given must be severed from the rest of the testator's property, and form the subject of a distinct gift. Thus, if a testator gives "all my leasehold property, furniture, stock in trade, and all other my estate and effects," then the whole gift is residuary (*f*).

Abatement in case of deficiency of assets.

If there is a deficiency of assets to pay the testator's debts, the general legacies abate rateably, but the specific legacies are not liable to abatement until the fund applicable for general legacies is exhausted.

Specific legatee entitled to be exonerated from charges.

And a specific legatee is entitled to have his legacy exonerated out of the general estate from charges created by the testator as distinguished from charges incidental to the property, such as the rent on leaseholds, or the calls on railway shares (*g*).

Ademption.

It follows from the nature of a specific legacy, that if the testator has not at his death any article answering the description of the thing bequeathed, the legacy fails. If the gift is of something which was his property when he made his will, and he parts with it before his death, it is said to be adeemed.

Interest on legacies.

The legatee is entitled to the interest and produce of a specific legacy from the testator's death (*h*), and the current dividend is apportionable under the Apportionment Act (*i*). With respect to a general legacy, if no time is appointed for its payment, it will carry interest at the rate of £4 per cent. per annum from the expiration of one year from the testator's death; and this rule extends to legacies under the will of a *feme covert* made in exercise of a power (*k*); but if a time of payment is mentioned, then the legacy will not carry interest before the appointed period,—as if a legacy is directed to be paid to the legatee when he shall attain twenty-one (*l*). If, however, the legatee

(*f*) See Bothamley *v.* Sherson, L. R. 20 Eq. 304.

(*g*) Bothamley *v.* Sherson, *ubi supra.*

(*h*) Barrington *v.* Tristram, 6 Ves. 345; Wright *v.* Warren, 4 De G. & Sm. 367.

(*i*) Pollock *v.* Pollock, L. R. 18 Eq. 329.

(*k*) Tatham *v.* Drummond, 2 H. & M. 262.

(*l*) Hearle *v.* Greenbank, 3 Atk. 716.

is the child of the testator and under age, interest on the legacy would be allowed him for maintenance from his parent's death, if there is no other fund provided for that purpose (*m*).

Annuity commences from death.

An annuity for life, given by will, commences from the death of the testator, and the first payment (where the will is silent as to the time of payment) is due at the expiration of one year from that time (*n*).

Legacy payable at a future day, whether vested or contingent.

When a legacy is given, payable at a future day, as on the legatee attaining a particular age, a question often arises whether the time for payment is annexed to the form or the substance of the gift; in other words, whether the arrival of the time is a condition precedent to the vesting of the legacy. Upon this subject the following points have been settled by the authorities:—

Points decided on this subject.

Where there is a complete gift independent of direction as to time of payment.

1. Where there is a gift complete in itself, with a direction superadded as to the time of payment, as if a legacy is given to A., to be paid to him at twenty-one, or to the children of A., to be paid to them respectively as and when they shall respectively attain twenty-one, the legacy vests immediately, and the payment only is postponed (*o*). And it makes no difference that the direction as to the time of payment precedes the words of gift; thus, a direction to pay or assign a legacy, and its investments to the children of A., as and when they shall respectively attain twenty-one, "to whom I give and bequeath the same accordingly," has been held to confer a vested interest on all the children living at the testator's death (*p*).

Where time of payment is of the essence of the gift.

2. Where the time of payment is annexed to the gift itself, or where there is no gift except in the direction to pay or divide, as, for example, where a legacy is given to A. when he shall attain a certain age, or to

(*m*) Harvey *v.* Harvey, 2 P. Wms. 21; Incledon *v.* Northcote, 3 Atk. 438; Wynch *v.* Wynch, 1 Cox, 433.

(*n*) Gibson *v.* Bott, 7 Ves. 96.

(*o*) Monkhouse *v.* Holme, 1 B. C. C. 297; Vivian *v.* Mills, 1 Beav. 315; Blease *v.* Burgh, 2 Beav. 221; May *v.* Wood, 3 B. C. C. 471; Sidney *v.* Vaughan, 2 Bro. Parl. Ca. 254; Booth *v.* Booth, 4 Ves. 399; Shrimpton *v.* Shrimpton, 31 Beav. 425.

(*p*) *In re* Bartholomew, 1 Mac. & G. 354; King *v.* Isaacson, 1 Sm. & Gif. 371.

the children of A. when they shall respectively attain a certain age, or where trustees are directed to pay a legacy to A., or to divide a trust fund among the children of A. "when" he or they shall attain a certain age, *and there is nothing more;* in each of these cases the legacy is contingent (*q*).

Where interest is given to legatee, or for his maintenance.

3. But very slight circumstances in the context will alter the construction, particularly where the bequest is of a residue, and not of a legacy merely (*r*). Thus, if a legacy is given to a person "at," or "when he attains" a certain age, and is accompanied by a gift of the interest in the meantime, or by a direction to apply such interest or any part thereof for his maintenance, or if the legacy is directed to be immediately separated from the estate, the legacy vests at once; and the same principle applies to a gift to a class of persons where there is a gift of the interest or a direction to apply the interest for their respective maintenance (*s*).

Case in which principle does not apply to a gift to a class.

Where an entire fund is given to a class of persons at a given age with a direction to the trustees to apply the income of the fund, or any part of it, for the maintenance of the members of the class generally, not confining such direction to the share of each particular member, this does not create a vested interest in a member of the class who dies under the age (*t*).

Where payment of legacy is postponed for convenience of estate.

4. Where the payment of the legacy is postponed for the convenience of the estate,—as if a legacy is directed to be paid to A., after the decease of B., to whom a life interest is bequeathed,—A. takes a vested interest on the testator's decease, the payment to A.

(*q*) Hanson *v.* Graham, 6 Ves. 239; Chance *v.* Chance, 16 Beav. 572; Ford *v.* Rawlins, 1 Sim. & Stu. 328; Lloyd *v.* Lloyd, 3 K. & J. 20; *In re* Jobson, 44 C. D. 154.

(*r*) Pearman *v.* Pearman, 33 Beav. 394, 397.

(*s*) Hanson *v.* Graham, 6 Ves. 239; Vawdry *v.* Geddes, 1 R. & M. 208; Saunders *v.* Vautier, Cr. & Ph. 240; Davies *v.* Fisher, 5 Beav. 201; Harrison *v.* Grimwood, 12 Beav. 192; Leeming *v.* Sherratt, 2 Hare, 14; *In re* Smith's Will, 20 Beav. 197; Eccles *v.* Birkett, 4 De G. & Sm. 105; *Re* Rouse's Estate, 9 Hare, 655; James *v.* Lord Wynford, 1 Sm. & Gif. 40; Tatham *v.* Vernon, 29 Beav. 604; *Re* Hart's Trusts, 3 De G. & J. 198; Shrimpton *v.* Shrimpton, 31 Beav. 425; Dundas *v.* Wolfe Murray, 1 H. & M. 425; Fox *v.* Fox, L. R. 19 Eq. 286.

(*t*) *Re* Parker, 16 C. D. 44.

being postponed only for the purpose of enabling B. to enjoy a prior life interest in the legacy (*u*).

Gift to a woman on marriage, how construed.

A simple gift of a *legacy* to a woman, to be paid to her on her marriage, provided she marries with the consent of certain persons, has been held to be contingent (*x*). But where a *residue* was bequeathed to trustees upon trust to pay the income to the testator's two grandnieces (who were both of age), until their respective marriages, and from and after their respective marriages to assign to them their respective moieties, and one of the grandnieces afterwards died without having married, it was held that she took a vested interest in her moiety, one of the grounds of the decision being that there was a difference between a legacy and a residue with respect to the application of the rules as to vesting (*y*). And in a recent case a testator gave one-third of his residue to his son and daughter in equal shares, the share of the son to vest at twenty-four, and the share of the daughter to vest on her marriage, with the consent of her guardian, with a gift over of the son's share on his death under twenty-four, and of the daughter's share on her death without having married "with such consent as aforesaid;" and it was held that the daughter having attained twenty-one without being married was entitled to her share (*z*).

Legacies charged on land.

The rule which is established as to legacies charged on and payable out of real estate, is well expressed by Mr. Butler, who observes that "when a legacy is bequeathed to a child on his attaining twenty-one or marrying, or on any other event personal to him, the legacy is evidently postponed to the time specified, from its being considered that the legatee will then want the benefit of the legacy; but when the estate is devised to a person for life, and after his decease is charged with a legacy, the legacy is evidently postponed till the decease of the devisee for life from its being incompatible with his life estate that it should

(*u*) Adams *v.* Robarts, 25 Beav. 500.
658.
(*x*) Atkins *v.* Hiccocks, 1 Atk.
(*y*) Booth *v.* Booth, 4 Ves. 399.
(*z*) West *v.* West, 4 Giff. 198.

be raised in his lifetime. The payment of the legacy is therefore considered to be postponed in the first case from regard to circumstances personal to the legatee, and in the second from regard to the circumstances of the estate, and it has been inferred that, in cases of the first description, the testator does not intend the legatee shall receive the legacy, unless the circumstances happen in which the testator made it payable, and that in cases of the second description the testator intends the legatee shall receive it at all events. In the former case, therefore, it has been held that if the legatee dies while the time of payment is in suspense, the legacy sinks into the land for the benefit of the inheritance, and in the latter case it has been held, that if the legatee dies during the continuance of the preceding estate or interest, his personal representatives will be entitled on its determination to have the legacy raised for their benefit (*a*). As to cases of the first description, however, the legacy will vest if the testator declare that it shall do so at his death" (*b*).

Legacy charged on land devised is not affected by lapse of devise.

In every case where a legacy charged on land is given on a contingency, and the contingency does not happen, the charge sinks for the benefit of the devisee (*c*). On the other hand, if land is devised charged with a sum of money, the lapse of the devise does not affect the charge (*d*); and if a gift is made to A. with a gift over on a contingency (which happens) to B., and B. dies in the testator's lifetime, the subject of the gift goes to the residuary legatee (*e*).

Construction of testamentary gifts to children.

In the bequest of legacies to children, a question often arises, what objects are to be included in the bequest under certain circumstances, and the rules of construction on this subject, laid down by Mr. Jarman in his valuable Treatise on Wills, will place the matter before the reader in a useful and intelligible form. He says: "First. That an immediate gift to children, whether it be to the children of a living or a deceased person, and whether to children simply, or to all the children, and

(*a*) Fearne's Cont. Rem. p. 556, n. 15.
(*b*) Watkins *v.* Cheek, 2 S. & St. 199.
(*c*) Gawler *v.* Standerwick, 2 Cox.
(*d*) Wigg *v.* Wigg, 1 Atk. 382.
(*e*) O'Mahoney *v.* Burdett, L. R. 7 H. L. 388.

whether there be a gift over in case of the decease of any of the children under age or not, comprehends the children living at the testator's death (if any), and those only. Secondly. That where a particular estate or interest is carved out, with a gift over to the children of the person taking that interest, or the children of any other person, such gift will embrace not only the objects living at the death of the testator, but all who may subsequently come into existence before the period of distribution. Thirdly. That where the period of distribution is postponed until the attainment of a given age by the children, the gift will apply to those who are living at the death of the testator, and who come into existence before the first child attains that age, *i.e.*, the period when the fund becomes distributable in respect of any one object or member of the class (*f*). Fourthly. With regard to immediate gifts, it is well settled that if there be no object *in esse* at the death of the testator, the gift will embrace all the children who may subsequently come into existence by way of executory gift; and with regard to gifts preceded by an anterior interest, the weight of authority is in favour of the position, that in all such cases, except in the instance of a legal remainder of real estate, if there is no object at the time of the vesting in possession, all the children subsequently born will be let in. Fifthly. That where the words, 'to be born,' or 'to be begotten,' are annexed to a devise or bequest to children, if the gift be immediate so that it would, but for the words in question, have been confined to children (if any) existing at the testator's death, they will have the effect of extending it to all the children who shall ever come into existence" (*g*).

Interest to be taken where power of appointment amounts to a trust.

Sometimes a power of appointment amongst children, or some other class of objects, is so expressed as to amount to a trust in favour of such objects in default of appointment. Where this is the case, the objects take an interest commensurate with that which might

(*f*) Gimblett *v.* Purton, L. R. 12 Eq. 427.

(*g*) See 2 Jarm. on Wills, 4th ed. pp. 155 *et seq.*; Mogg *v.* Mogg, 1 Mer. 654.

have been appointed (*h*); and if the power is given in terms which are particularly applicable to a tenancy in common, the objects will take as tenants in common, and not as joint tenants. In *Crozier* v. *Crozier* (*h*), an estate was devised to A. for life, with remainder to his issue, to be divided between and amongst them in such manner, shares, and proportions as he by his will should appoint. A. having died without having exercised the power of appointment, it was held that on his death the issue took absolute interests as tenants in *common* (*i*). In *Wace* v. *Mallard* (*j*), the testator bequeathed his property to his widow, her heirs, executors, administrators, and assigns, for her sole benefit, with full confidence that she would appropriate it for the benefit of all her children; and it was held that the bequest amounted to a gift to the widow for life, with a power of appointment in favour of her children, with a gift in default of appointment to her children as *joint tenants*.

Legacies to illegitimate children.

As regards gifts to illegitimate children, the following propositions may be stated as the result of decided cases:—(1) A gift to children *primâ facie* means legitimate children only; but it will be held to include reputed children born in the testator's lifetime, or *en ventre sa mère* at his death, if an intention to that effect is sufficiently shown by expressions in the will, coupled with the surrounding circumstances (*k*). (2) A gift to the future children of the testator, or of any other person, by a particular woman not being his wife, is void, because the fact of paternity cannot be inquired into; but a gift to the future children of a particular woman, of whom the testator or any other specified person shall be the reputed father, is good as regards children born in the testator's lifetime, or *en ventre sa mère* at his death, because there is no objection to an inquiry as to *reputation* of paternity (*l*). (3) The question whether a child is legitimate, so as to be capable

(*h*) Crozier *v.* Crozier, 3 D. & W. 383; Kavanagh *v.* Morland, 1 Kay, 16.

(*i*) See also White *v.* Wilson, 22 L. J. Ch. 62.

(*j*) 21 L. J. Ch. 355.

(*k*) Hill *v.* Crook, L. R. 6 H. L. 283; 3 C. D. 773; *Re* Haseldine, 31 C. D. 511; *In re* Horner, 37 C. D. 695.

(*l*) Ockleston *v.* Fullalove, L. R. 9 Ch. 147; *In re* Bolton, 31 C. D. 542.

of taking under a gift to children, depends on the law of the father's domicil, and this is so whether the subject-matter of the gift is real or personal estate (*m*). But a child illegitimate according to the law of England cannot *inherit* land in England (*n*).

Who take under a gift to next of kin, *simpliciter*,

A gift to the next of kin of A., without more, creates a joint tenancy in the persons who are nearest of kin to A. in equal degree without reference to the Statutes of Distribution, so that if A. leaves two brothers and a nephew (the child of a deceased brother), or a father and child, the two brothers to the exclusion of the nephew in the one case, and the father and child in the other case, would take the property as joint tenants (*o*). But if the gift is to the next of kin according to the Statutes of Distribution, the persons to take will be the relations of A., amongst whom the personal property of an intestate is made distributable by the statute, and such persons will take as tenants in common (*p*); but a wife or husband (not being of the kin of A.) cannot take under such a gift (*q*).

or under a gift to next of kin according to the Statutes of Distribution.

At what time next of kin are to be ascertained.

It is a settled rule that under a gift to the next of kin of the testator, whether the gift be immediate or preceded by a life interest, the persons to take are those who answer the description at the death of the testator, unless a contrary intention is clearly shown (*r*).

A gift to the person or persons entitled under the Statute of Distributions, excludes the husband, whose right is not under that statute (*s*).

Who takes under a gift to executors or administrators,

A gift of personal property to A. for life, and after his decease to his executors or administrators, vests the subject of the gift absolutely in A., and on his death it passes to his executors or administrators as

(*m*) *In re* Grey's Trusts, (1892) 3 Ch. 88.

(*n*) Doe *d.* Vardill, 7 Cl. & Fin. 895.

(*o*) Elmsley *v.* Young, 2 M. & K. 780; Withy *v.* Mangles, 4 Beav. 358; 10 Cl. & Fin. 215; Baker *v.* Gibson, 12 Beav. 101; Lucas *v.* Brandreth, 28 Beav. 274; Avison *v.* Simpson, John. 43; Rook *v.* Att.-Gen. 31 Beav. 313; Halton *v.* Foster, L. R. 3 Ch. App. 505.

(*p*) Bullock *v.* Downes, 9 H. L. C. 30; Ranking's Settlement Trusts, L. R. 6 Eq. 601.

(*q*) Cholmondeley *v.* Lord Ashburton, 6 Beav. 86; Kilner *v.* Leech, 10 Beav. 362.

(*r*) Bullock *v.* Downes, *ubi supra*; Wharton *v.* Barker, 4 K. & J. 488; Lee *v.* Lee, 1 Dr. & Sm. 85; Moss *v.* Dunlop, John. 490; Mortimer *v.* Slater, 7 C. D. 322.

(*s*) Milne *v.* Gilbart, 2 De G. M. & G. 715.

part of his assets, and it makes no difference that between the life interest and the ultimate gift intermediate interests are given to other persons or a power of appointment is given to A. himself (*t*). And a gift to the executors or administrators of A., a deceased person, is a gift to his legal personal representatives as a part of his estate, and not to them beneficially (*u*).

or under a gift to "representatives," or "legal representatives."

The term "representatives" or "legal representatives" means *primâ facie* "executors or administrators" (*x*); but the context frequently shows that it was the intention of the testator to use the term in a different sense,—as if a testator directs that the legal representatives shall take "share and share alike" (*y*), or "*per stirpes*" (*z*), in which cases the persons entitled under the Statutes of Distribution have been held to be the objects of the gift. Again, if personal estate is given immediately and without the intervention of any previous interests to A., or in case of his death to his "representatives" or "legal representatives," A. takes absolutely if he survives the testator, but if he dies in the testator's lifetime the property goes to the persons entitled to his personal estate under the Statutes of Distribution, and not to his executors or administrators, on the ground of the improbability that the testator should mean the legacy to be thrown into the general assets of the legatee dying before him (*a*).

Construction of gifts over on death of legatee, to what period death is to be referred.

When a gift of a legacy is followed by a gift over on the death of the legatee, the question often arises whether the death referred to is a death at any time,

(*t*) Daniel *v.* Dudley, 1 Phil. 1; Attorney-General *v.* Malkin, 2 Phil. 64; Hames *v.* Hames, 2 Keen, 646; Page *v.* Soper, 22 L. J. Ch. 1044; Grafftey *v.* Humpage, 1 Beav. 46. In Mackenzie *v.* Mackenzie, 3 M. & G. 559, there was a gift to A., with remainder to his appointees, and A. appointed the property to his executors or administrators, and it was held that it formed part of his personal estate, which might be disposed of by him, or, in the event of his intestacy, would devolve on his representatives as such.

(*u*) Long *v.* Watkinson, 17 Beav. 471; Trethewy *v.* Helyar, 4 C. D. 53.

(*x*) Corbyn *v.* French, 4 Ves. 418; Saberton *v.* Skeels, 1 R. & M. 587 Taylor *v.* Beverley, 1 Coll. 108; Hinchcliffe *v.* Westwood, 2 De G. & Sm. 216; *In re* Crawford's Trusts, 2 Drew. 230; Dixon *v.* Dixon, 24 Beav. 129.

(*y*) Smith *v.* Palmer, 7 Hare, 225; King *v.* Cleveland, 4 De G. & J. 477.

(*z*) Atherton *v.* Crowther, 19 Beav. 448.

(*a*) Bridge *v.* Abbott, 3 B. C. C. 224; Cotton *v.* Cotton, 2 Beav. 67; *In re* Crawford's Trusts, *ubi supra*. See also *In re* Gryll's Trusts, L. R. 6 Eq. 590.

or a death within a particular period. In *Edwards* v. *Edwards* (*b*) the cases on this subject were divided into four classes;—(1) Where the gift is to A., and if he shall die to B.; (2) A gift to A., and if he shall die without children to B.; (3) To X. for life, with remainder to A., and if A. shall die to B.; (4) To X. for life, with remainder to A., and if he shall die without children to B.; and the Court stated as the result of the cases that, in the 1st class, the contingency is the death of A. in the testator's life; in the 2nd, death at any time; and in the 3rd and 4th, death before X. But it has been decided by the House of Lords that the above rule is incorrect as regards the 4th class of cases, the death there being death at any time, as in the 2nd (*c*).

V. *Lapse.*

Lapse, what is?

If a devisee or legatee of real or personal estate dies in the lifetime of the testator, the devise or bequest fails, or, as it is usually expressed, lapses, except in the cases provided for by the Wills Act, which will be presently mentioned.

Destination of the subject of lapsed gifts.

With respect to the destination of lapsed devises and bequests, there was, under the law as it stood prior to the Wills Act, an important difference between real and personal estate. In the case of personal estate, the lapsed legacy fell into the residuary estate unless a contrary intention appeared by the will; but where land was the subject of the lapsed gift, it went to the heir-at-law of the testator.

Under Wills Act lapsed interests in real estate go to residuary devisee.

The 25th section of the Wills Act provides, that, unless a contrary intention shall appear by the will, such real estate, or interest therein as shall be comprised or intended to be comprised in any devise in such will contained which shall fail or be void by

(*b*) 15 Beav. 357.

(*c*) Mahoney *v.* Burdett, L. R. 7 H. L. 388; Ingram *v.* Soutten, *ib.* 408. But see Olivant *v.* Wright, 1 C. D. 346, where the Court thought that the testator showed a contrary intention.

reason of the death of the devisee in the lifetime of the testator, or by reason of such devise being contrary to law, or otherwise incapable of taking effect, shall be included in the residuary devise (if any) contained in such will.

What devises are residuary so as to include the subject of lapsed gifts.

The effect of this section is to assimilate the law with regard to the destination of lapsed interests in real and personal estates, and consequently the cases which have been decided in reference to personal estate will now be equally applicable to real estate. The question whether a devise or bequest of real or personal estate is residuary, so as to include lapsed interests, must of course depend upon the particular language used in each case. Words of exception will not of themselves prevent the gift from being residuary, as, for example, where there is a devise or bequest of particular lands or of a specific legacy, followed by a devise or bequest of all other the testator's estate, or all the testator's estate "except" what has been before given, the last-mentioned devise or bequest is residuary, and includes lapsed interests (*d*). In all such cases the question is whether the property is excepted in order to take it away under all circumstances and for all purposes from the person to whom the residue is given, or whether it is excepted merely for the purpose of giving it to somebody else. If the latter, and the gift to somebody else fails, the donees of all except this property are entitled to take the whole (*e*).

It has been held that a devise of "the rest of my freehold lands" in a particular parish is not a residuary devise within the meaning of the Wills Act, and did not include the subject of a void devise in the same parish (*f*).

No lapse on death of tenant in tail leaving inheritable issue,

The 32nd section of the Wills Act provides, that "where any person to whom any real estate shall be devised for an estate tail, or an estate in *quasi* entail,

(*d*) Cogswell *v.* Armstrong, 2 K. & J. 227; Bernard *v.* Minshull, 1 John. 276.

(*e*) Bernard *v.* Minshull, 1 John. 276, 299. See also Cambridge *v.* Rous, 8 Ves. 12, 25; Easum *v.* Appleford, 5 My. & Cr. 61, 62; Evans *v.* Jones, 2 Col. C. C. 516; Cogswell *v.* Armstrong, 2 K. & J. 227.

(*f*) Springett *v.* Jenings, L. R. 10 Eq. 488; *ib.* 6 Ch. App. 333.

shall die in the lifetime of the testator, leaving issue who would be inheritable under such entail, and any such issue shall be living at the time of the death of the testator, such devise shall not lapse, but shall take effect as if the death of such person had happened immediately after the death of the testator, unless a contrary intention shall appear by the will." And the 33rd section provides, that "where any person being a child or other issue of the testator, to whom any real or personal estate shall be devised or bequeathed for any estate or interest not determinable at or before the death of such person, shall die in the lifetime of the testator leaving issue, and any such issue of such person shall be living at the time of the death of the testator, such devise or bequest shall not lapse, but shall take effect as if the death of such person had happened immediately after the death of the testator, unless a contrary intention shall appear by the will."

or on death of devisee or legatee, being issue of testator, leaving issue.

With regard to the construction of the 33rd section, the following points have been decided:—1. That it applies to appointments by will under a general power (*g*), but not to appointments under a power limited to particular objects (*h*). 2. That it applies to a case where the devisee or legatee is dead at the date of the will, leaving issue who survive the testator (*i*). 3. That it is not necessary, in order to prevent lapse, that the issue living at the decease of the testator should have been living when the legatee died. Thus, where a legacy was given to a daughter who died before the testatrix, leaving one child who also died before the testatrix, leaving a child who survived the testatrix, it was held that the legacy did not lapse (*k*). 4. That the section does not apply to gifts to a class (*l*). 5. That the section does not substitute for the deceased devisee or legatee the issue whose existence is the event or con-

Points decided with respect to 33rd section of Wills Act.

(*g*) Eccles *v.* Cheyne, 2 K. & J. 676.

(*h*) Griffiths *v.* Gale, 12 Sim. 354.

(*i*) Wisden *v.* Wisden, 2 Sm. & Gif. 396.

(*k*) In the goods of Parker, 31 L. J. Prob. 9.

(*l*) Browne *v.* Hammond, John. 210; Cruse *v.* Howell, 4 Drew. 215. See *In re* Chaplin's Trusts, 33 L. J. Ch. 183.

dition which prevents the lapse, but renders the subject of the gift the absolute property of the deceased devisee or legatee, and disposable by his will notwithstanding his death before the testator. Thus, if a child to whom a legacy is given makes a will containing a general or residuary bequest of his personal estate, and then dies before the original testator, leaving issue who survives such testator, the legacy goes to the residuary legatee under the child's will (*m*), and probate duty is payable in respect thereof (*n*). In a recent case where a testator gave the residue of his estate among his eight children, and directed that the share of his daughter if she survived him should be subject to the trusts of her marriage settlement, and the daughter died before him leaving issue, it was held that the share was, under sect. 33, payable to the trustees of the settlement as if the daughter had survived (*o*).

No lapse on death of one of several joint tenants or of one of several members of a class.

A gift to several persons as joint tenants, or to a class of persons, does not come within the operation of the doctrine of lapse unless all such joint tenants, or all the members constituting the class, die before the testator, as the gift takes effect in favour of those who survive (*p*); and where an estate is devised, subject to the payment of a sum thereout, the sum charged does not lapse by the death of the devisee of the estate in the testator's life (*q*). And a gift to a class operates in favour of those capable of taking, to the exclusion of those who are incapable (*r*).

Where a legacy is given to a person with a gift over if he dies before a given event, *e.g.*, before he attains twenty-one, and the legatee dies in the testator's lifetime, and *before* the given event, the bequest over will take effect; but if the legatee died in the testator's lifetime *after* the given event, the legacy lapses (*s*).

(*m*) Johnson *v.* Johnson, 3 Hare, 157.

(*n*) Exors of Perry *v.* The Queen, L. R. 4 Exch. 27.

(*o*) *Re* Hone's Trust, 22 C. D. 663.

(*p*) 1 Jarm. on Wills, 4th ed. 341; Leigh *v.* Leigh, 23 L. J. Ch. 287.

(*q*) Oke *v.* Heath, 1 Ves. sen. 135.

(*r*) *In re* Coleman and Jarrom, 4 C. D. 165.

(*s*) Walker *v.* Maine, 1 J. & W. 1; Humphreys *v.* Howes, 1 R. & M. 639; Humberstone *v.* Stanton, 1 V.

A gift of personal estate on a contingency, *e.g.*, to A. if he attains twenty-one, carries with it the intermediate income (*t*); but a devise of real estate does not, and the intermediate rents go to the residuary devisee, and if there is no residuary devise, or if the devise in question is itself a residuary devise, to the heir-at-law (*u*). If, however, there is a devise and bequest of real and personal estate as a mixed fund, the testator shows an intention that the rule applicable to personal estate shall apply also to the real estate, and the intermediate rents will follow the *corpus* (*v*). In a case where residuary real estate was devised to the second and other sons of A. (who was living, and had only one son, B.), and their issue in tail, with remainder to B. for life and his issue in tail, and the residuary personal estate was given upon trust to lay it out on the purchase of real estate to be settled to the same uses, it was held that during the suspense of vesting, the intermediate rents of the real estate belonged to the heir-at-law, and the income of the personal estate (including the income arising from the investment of such income) was liable to be laid out in the purchase of land (*w*).

A contingent gift of personal estate carries with it intermediate income, but a devise of real estates does not.

Where the real and personal estate is made a mixed fund the rule as to personalty applies to the real estate also.

VI. *For what period the vesting of property given by will may be postponed or income may be accumulated, having regard to the rule against perpetuities and the Thellusson and Accumulation Acts.*

It is a rule of law that land cannot be limited to an unborn person for life with remainder to the children of that unborn person (*x*). It is also a rule of law that

Rule against perpetuities.

& B. 385. If a bequest of a sum is made to A. for life, with remainder to B.; to be paid to him at twenty-one, with a gift over in case of his death before the same shall become payable, and B. attains twenty-one, and dies before A., the legacy passes to the representatives of B. Walker *v.* Maine, *ubi supra;* Jones *v.* Jones, 13 Sim. 561.

(*t*) Green *v.* Ekins, 2 Atk. 473.

(*u*) Stephens *v.* Stephens, Ca. temp. Talbot, 228.

(*v*) Genery *v.* Fitzgerald, Jac. 468.

(*w*) Hodgson *v.* Bective, 1 H. & M. 376; 33 L. J. Ch. 601. See also Wade Gery *v.* Handley, 1 C. D. 653.

(*x*) Duke of Marlborough *v.* Earl Godolphin, 1 Ed. 404. See Knapping *v.* Tomlinson, 34 L. J. Ch. 3.

any limitation of land, whether by way of contingent remainder (*y*) or executory or springing use, except one following an estate tail, is void, unless the estate created by it will certainly become absolutely vested within the space of a life or lives in being, and twenty-one years and some months afterwards. Thus, if lands are devised to A. in fee simple, with an executory devise over in case A. or any of his heirs shall do a particular act, the devise over is void. But if lands are devised to A. in tail, with an executory devise over in case A., or the heirs of his body, shall do a particular act, the executory devise is valid, because A. being tenant in tail can at any time bar the entail and the executory devise, so that the property is not in fact tied up, and consequently the rule is not transgressed (*a*).

Instances of application of rule to real estate.

Rule extends to personalty.

The rule against perpetuities is equally applicable to gifts of personal estate. It is therefore necessary, in framing all such gifts, to take care that the absolute vesting of them is not postponed beyond the period allowed, viz., a life or lives in being and twenty-one years afterwards.

Instances of application of rule to personalty.

Thus, if a legacy is given in trust for A. for life, and after his death for all his children who shall attain twenty-two, the gift is void, because it is possible that A. may die leaving a child just born, and in such case nearly twenty-two years beyond the life of A. must, or *may*, elapse before the legacy becomes absolutely vested (*b*).

All limitations ulterior to or expectant on one which is void for remoteness, are void also (*c*).

How rule to be applied, where will exercises a special power,

In exercising by will powers of appointment in favour of particular objects referred to in the power, it is necessary to bear in mind that the rule in question

And the rule is independent of the rule against perpetuities. Whitby *v.* Mitchell, 42 C. D. 499; 44 C. D. 85.

(*y*) It has sometimes been doubted whether the rule against perpetuities applies to a legal contingent remainder. But see *In re* Forrest, 43 C. D. 246.

(*a*) See Butler's note to Co. Litt. 271 b. See also Heasman *v.* Pearse, L. R. 7 Ch. A. 275.

(*b*) Thomas *v.* Wilberforce, 31 Beav. 299.

(*c*) 1 Jarm. on Wills, 283.

is to be applied as if the appointment was contained in the instrument creating the power (*d*). But a general power is equivalent to ownership, and time will be reckoned, in the case of a general power, from the death of the donee, and this is so, according to a recent case, where the donee is a married woman, and the power is testamentary only (*e*).

or a general power.

Accumulation of Income.

Previously to the passing of the Act about to be mentioned, the income of property might be directed to be accumulated for the whole period permitted by the rule against perpetuities, as was decided in the great case of *Thellusson* v. *Woodford* (*f*).

For what period income might have been accumulated before Thellusson Act.

The 39 & 40 Geo. 3, c. 98 (commonly called the Thellusson Act) prohibits any disposition by deed, will, or otherwise of real or personal property, so that the rents, or produce thereof, shall be wholly or partially accumulated for any longer term than the life or lives of the grantor or settlor, *or* the term of twenty-one years from the death of the grantor, settlor, or testator, *or* during the minority or respective minorities of any person or persons who shall be living or *in ventre sa mère* at the time of the death of the settlor or testator, *or* during the minority or respective minorities only of any person or persons, who, under the uses or trusts of the instrument directing such accumulation, would for the time being, if of full age, be entitled unto the rents, or annual produce so directed to be accumulated; and every direction to accumulate otherwise than as aforesaid is null and void, and the rents and produce so directed to be accumulated are to go to and be received by such person or persons as would have been entitled thereto if such accumulation had not been directed (*g*). But it is provided that the Act shall not extend to any provision for payment of debts of any

Thellusson Act prohibits accumulations beyond certain periods.

(*d*) 1 Sug. Pow. 474.
(*e*) Ross *v.* Jackson, 29 C. D. 521.
(*f*) 4 Ves. 227.
(*g*) Sect. 1.

grantor, settlor, or devisor, or other person or persons, or to any provision for raising portions for any child or children of any grantor, settlor, or devisor, or any child or children of any person taking any interest under any such conveyance, settlement, or devise, or to any direction touching the produce of timber or wood upon any lands or tenements (*h*).

Accumulation Act, 1892, still further limits period of accumulation for purchase of land.

And the Accumulation Act, 1892 (*i*), prohibits any settlement or disposition of property in such manner that the rents or income thereof shall be wholly or partially accumulated, *for the purchase of land only*, for any longer period than during the minority or respective minorities of any person or persons who under the uses or trusts of the instrument directing such accumulation would for the time being, if of full age, be entitled to the rents or income so directed to be accumulated.

Direction to accumulate beyond the period allowed, is good *pro tanto*.

If a testator directs income to be accumulated for a period exceeding the time allowed by the Thellusson Act, the accumulation will be allowed *pro tanto*, and will be void only for the excess (*j*).

Periods mentioned in the Act are alternative.

The periods mentioned in the Thellusson Act are alternative, and not cumulative. Consequently a direction to accumulate during the life of the grantor and for some time afterwards ceases at his death, although twenty-one years has not then expired (*k*).

Whether Act applies to accumulation arising by operation of law.

The question has sometimes arisen whether the Thellusson Act applies to cases where there is no express trust for accumulation, but there is in the will an executory devise of such a nature that accumulation becomes necessary during the suspense of vesting.

In *Macdonald* v. *Bryce* (*l*) property was given to A. (the eldest son of B.), and on his death, under twenty-one, to the other sons of B. in succession, and failing them, to others. A. died under twenty-one, and B. had no other son, but was still living at the end of twenty-one years from the death of A. It was held

(*h*) Sect. 2.
(*i*) 55 & 56 Vict. c. 58.
(*j*) Griffiths *v.* Vere, 9 Ves. 127.
(*k*) Lady Roselyn's Trust, 16 Sim. 391; Jagger *v.* Jagger, 25 C. D. 729.
(*l*) 2 Keen, 276.

by Lord Langdale, that the Thellusson Act prevented accumulation during the rest of B.'s life, and that the income during that period was undisposed of and passed to the testator's next of kin. This decision was disapproved of by Vice-Chancellor Shadwell in the case of *Elborne* v. *Good* (*m*), on the ground that, in the opinion of the Vice-Chancellor, the Act does not apply to cases where the accumulation arises by operation of law, but only to cases where there is an express trust for accumulation. On the other hand Lord Cranworth, in *Tench* v. *Cheese* (*n*), thought that if a testator directs that to be done which, as a necessary consequence, leads to an indefinite accumulation, he must, within the meaning of the Act, be taken to have directed accumulation (*o*).

Destination of income directed to be accumulated beyond period allowed.

It will be observed that the Act simply makes void the direction to accumulate, and leaves the rents to go to such person, &c., as would have been entitled thereto if such accumulation had not been directed. Where, then, a residue is given upon trust to accumulate the income for the life of A., or any other period, such income will, after the expiration of the twenty-one years and during the rest of the period of accumulation directed by the will, go to the next of kin or heir-at-law of the testator, according to the nature of the property (*p*). But, in a case where a testator directed the rents of an estate to be accumulated until a certain sum was raised, and subject to such direction the estate was devised to several persons in succession, it was held that the direction to accumulate operated as a charge on the successive estates, and that accumulations made after twenty-one years from the testator's death, belonged not to his heir-at-law, but to the persons entitled to the rents and profits under the devise (*q*).

What is a provision for raising por-

With respect to the exception in the 2nd section of the Thellusson Act of a provision for raising portions,

(*m*) 14 Sim. 165.
(*n*) 6 De G. M. & G. 453.
(*o*) See also Morgan *v.* Morgan, 4 De G. & Sm. 164; Mathews *v.* Keble, L. R. 4 Eq. 467.
(*p*) Eyre *v.* Marsdon, 2 Keen, 276; Macdonald *v.* Bryce, *ubi supra;* Talbot *v.* Javers, L. R. 20 Eq. 255; Weatherall *v.* Thornbrugh, 8 C. D. 261.
(*q*) *In re* Clulow's Trust, 1 J. & H. 639.

tions within the exception in sect. 2.

it has been held (1) that the portions to be provided for may be portions given by the same instrument which contains the provision by way of accumulation, or by a former instrument (*r*); (2) that where the provision is for children of any person other than the grantor, &c., the parent must take some interest under the same instrument, but that it need not be an interest in the very property directed to be accumulated (*r*); (3) that a direction to accumulate the income of a testator's residue or of a legacy (*s*), followed by a gift of that residue or legacy with the accumulation to the children of a person taking an interest under the will, is not a provision for raising portions for such child within the meaning of the exception.

As to the validity of accumulations to pay debts.

A direction to accumulate rents and profits for an indefinite period for the purpose of paying debts, with a devise of the land (subject to such trust) to uses in strict settlement, does not contravene the rule against perpetuities, because, so soon as the fee simple vests in possession under the limitations, the owner can put an end to the accumulations (*t*), and a trust of this nature is excepted by the 2nd section from the operation of the Thellusson Act. But it was held in a recent case that if the creditor insists on and obtains payment at once out of the *corpus* of the estate, under a decree in an administration suit or otherwise, the tenant in remainder cannot require the accumulation to go on so as to recoup the *corpus* out of the income of the remaining property, and the V.-C. intimated his opinion that if the will had contained a clause expressly directing such recouping, the clause would have been void (*u*).

(*r*) Barrington *v.* Liddell, 2 De G. M. & G. 480.

(*s*) Edwards *v.* Tuck, 3 De G. M. & G. 40; Bourne *v.* Buckton, 2 Sim. N. S. 91; Drewett *v.* Pollard, 27 Beav. 196.

(*t*) Bateman *v.* Hotchkin, 10 Beav. 426. But see *In re* Fitzgerald's Settlement, 37 C. D. 18, where the Court held that under a trust to accumulate an annual sum out of the rents, in order to pay off mortgages, the mortgagees were *cestuis que trust*, and that the trust could not be put an end to by the owner of the estate, who had barred the entail and acquired the fee simple in possession.

(*u*) Tewart *v.* Lawson, L. R. 18 Eq. 490; Norton *v.* Johnstone, 30 C. D. 649.

A contingent liability, under a covenant entered into by the testator, is a debt within the meaning of the exception in the 2nd section, and may be provided for by a direction to create a sinking fund without any reference to the period of accumulation allowed by the Thellusson Act (*x*).

What is a provision for payment of debts within the Act.

VII. *Gifts to charities.*

The Mortmain and Charitable Uses Act, 1888 (which was in effect a re-enactment and consolidation of previous Acts, and in particular of 9 Geo. 2, c. 36), rendered void dispositions by will of land or of any interest in land, or of money to be laid out in the purchase of land, for charitable purposes, subject to certain exceptions. The Act of 1888 has been practically repealed, so far as regards dispositions by will, by the Mortmain and Charitable Uses Act, 1891, which came into operation on the 5th August, 1891.

Act of 1888, rendering void dispositions of land by will for charitable purposes, repealed *pro tanto* by Act of 1891.

As the law now stands (*y*), any property, whether real or personal, may be given by will for any charitable

Real or personal property may now be

(*x*) Varlo *v.* Faden, 27 Beav. 255; S. C., 1 De G. F. & J. 211.

(*y*) Charitable gifts contained in the wills of persons who died before the 5th August, 1891, are governed by the law which was in operation up to that date. Under that law not only a devise of land, but a gift of money secured on, or arising out of, or in any way connected with land, was void, and pure personalty only, *i.e.*, personalty entirely unconnected with land, could be made the subject of a charitable gift. Thus, money secured by mortgage of land, including an equitable mortgage by deposit of deeds (Waterhouse *v.* Holmes, 2 Sim. 162), a vendor's lien for unpaid purchase-money (Harrison *v.* Harrison, 1 R. & M. 71), and the proceeds of growing crops (Symonds *v.* Marine Society, 2 Giff. 323), were held to be interests in land. On the other hand, shares in gas, canal, railway, or other companies, possessing land for the purposes of their undertaking, or the debentures or debenture stock of such companies, were held not to be interests in land. (Myers *v.* Perigal, 2 D. M. & G. 599; Holdsworth *v.* Davenport, 3 C. D. 185; Attree *v.* Hume, 9 C. D. 337; and other cases). A gift of money to a charity to be applied in building was *primâ facie* void, as involving the purchase of land for a site. Trye *v.* Corporation of Gloucester, 14 Beav. 173. But there was no objection to a bequest of money for the erection or repair of buildings on land already in mortmain, or for the endowment of churches or chapels in existence. (Attorney-General *v.* Munby, 1 Mer. 327; Edwards *v.* Hall, 11 Hare, 13; Sewell *v.* Crewe Read, L. R. 2 Eq. 60; Booth *v.* Carter, L. R. 3 Eq. 757).

Law as to charitable gifts in the wills of persons who died before 1st August, 1891.

left by will for charitable purposes.

use, subject, as regards gifts of land or of personal estate to be laid out in the purchase of land, to the following provisions contained in the Act of 1891 :—

Land assured by will for a charitable purpose to be sold.

Sect. 5. Land may be assured by will to or for the benefit of any charitable use, but, except as hereinafter provided, such land shall, notwithstanding anything in the will contained to the contrary, be sold within one year from the death of the testator, or such extended period as may be determined by the High Court, or any judge thereof sitting at chambers, or by the Charity Commissioners.

Land after expiration of time limited for sale to be sold by order of Charity Commissioners.

Sect. 6. So soon as the time limited for the sale of any lands under any such assurance shall have expired without completion of the sale of the land, the land unsold shall vest forthwith in the official trustee of charity lands, and the Charity Commissioners shall take all necessary steps for the sale or completion of the sale of such land to be effected with all reasonable speed by the administering trustees for the time being thereof, and for this purpose the said commissioners may make any order under their seal directing such trustees to proceed with the sale or completion of the sale of the said land or removing such trustees and appointing others, and may provide by any such order for the payment of the proceeds of sale to the official trustees of charitable funds in trust for the charity, and for the payment of the costs and expenses incurred by the said administering trustees in or connected with such sale, and every such order shall be enforceable by the same means and be subject to the same provisions as are applicable under the Charitable Trusts Act, 1853, and the Acts amending the same, respectively, to any orders of the said commissioners made thereunder.

Personal estate by will directed to be laid out in land not to be so laid out.

Sect. 7. Any personal estate by will directed to be laid out in the purchase of land to or for the benefit of any charitable uses shall, except as hereinafter provided, be held to or for the benefit of the charitable uses as though there had been no such direction to lay it out in the purchase of land.

Power to retain land in certain cases.

Sect. 8. It shall be lawful for the High Court, or any judge thereof sitting at chambers, or for the Charity Commissioners, if satisfied that land assured by will to or for the

benefit of any charitable use, or proposed to be purchased out of personal estate by will directed to be laid out in the purchase of land, is required for actual occupation for the purposes of the charity and not as an investment, by order to sanction the retention or acquisition, as the case may be, of such land.

Exemptions under prior Acts remain in force.

All exemptions by statute from the operation of the Mortmain Acts which were in force at the time of the passing of the Act of 1891 are saved, and the Act does not apply to any land or personal estate to be laid out in the purchase of land acquired under any devise to which such exemptions apply. Thus land not exceeding five acres, or personal estate not exceeding £500 in value, may be given under 43 Geo. 3, c. 108, s. 1, for a church or chapel, or a house for the residence of the officiating minister, or a churchyard or glebe; and under sect. 6 of the Mortmain and Charitable Uses Act, 1888, a limited quantity of land may be given by will for a public park, public museum, or elementary school. In neither of these cases would it be necessary to have an order of the Charity Commissioners to authorize the retention of the land under sect. 8 of the Act of 1891.

Construction of sect. 8.

It is apprehended that under sect. 8, the only question to be considered by the Court or the Charity Commissioners will be whether the land is required for actual occupation, and that, if satisfied that it is, they will as a matter of course sanction its retention or acquisition. Thus if land is devised to trustees as a site for a hospital to be erected thereon, the only question would be whether the whole of the land so given is necessary for the purpose; and if not, the surplus would have to be sold.

Gift to a charity not obnoxious to rule against perpetuities.

A gift for charitable purposes is not obnoxious to the rule against perpetuities, although the trust may last for an indefinite period.

Gift for "private charity," or for religious purposes not

Any gift for the promotion of a useful public purpose is charitable, but the purpose must be public; for if money is given in trust for such benevolent purposes

connected with edification of the public, not recognized.

as the executors shall approve (*z*), or in "private charity" (*a*), the law will not recognize such a trust. So also as regards gifts for the maintenance of religious services, those services must be such as tend directly or indirectly to the instruction or edification of the public; and a gift to a religious community of persons who spend their lives in celibacy for the purpose of sanctifying their souls by prayer and pious contemplation has been held not to be charitable (*b*).

Gift for perpetual repair of tomb in a church good, *secus* if tomb in churchyard.

A trust to repair a church or a monument in a church, being an ornament of the building (*c*), or to repair a parsonage house (*d*), or a churchyard (*e*), is a good charitable trust, as being for the benefit of the inhabitants of the place; but a trust to repair a particular tomb in a churchyard is a mere private purpose, and not charitable; and if the trust is to last for an indefinite period, the gift is void as creating a perpetuity (*f*).

But condition for transfer of fund from one charity to another, if tomb not kept up, valid.

In a recent case, a fund was given to a charity, on condition that the trustees of the charity should keep in repair a family vault, with a gift over to another charity on the trustees failing to do so. It was held that the gift over was valid, on the principle that the rule against perpetuities has no application to a transfer in a certain event of property from one charity to another (*g*).

Cy-près doctrine.

If a testator shows a general intention in favour of charity, but the objects are not specifically defined, or the defined objects fail, the Court will carry out the general intention *cy-pres* (*h*). If a testator shows an intention not of general charity, but to give to some particular institution only, and the gift fails because the institution has ceased to exist in the testator's

Lapse by failure of object in testator's lifetime.

(*z*) Morice *v.* Bishop of Durham, 10 Ves. 532.

(*a*) Ommanney *v.* Butcher, T. & R. 260.

(*b*) Cocks *v.* Manners, L. R. 12 Eq. 574.

(*c*) Hoare *v.* Osborne, L. R. 1 Eq. 585.

(*d*) Attorney-General *v.* Bishop of Chester, 1 Bro. C. C. 444.

(*e*) *In re* Vaughan, 33 C. D. 187.

(*f*) Lloyd *v.* Lloyd, 2 Sim. N. S. 255; Hoare *v.* Osborne, L. R. 1 Eq. 585.

(*g*) *In re* Tyler, (1891) 3 Ch. 252.

(*h*) Moggridge *v.* Thackwell, 7 Ves. 69.

lifetime, the legacy will fall into the residue (*i*). But if the institution comes to an end after the testator's death, and before the legacy is paid over, there is no lapse, and the legacy falls to the Crown, who will apply it according to custom for some analogous purpose of charity (*j*).

Cy-près doctrine applies, if object fails afterwards.

Trustees of charitable funds may invest on real securities, but, where the equity of redemption in the property comprised in any such security becomes liable to foreclosure, the property must be sold (*k*).

Charitable funds may be invested in real securities.

VIII. *Conversion.*

Where a testator gives his personal estate or the residue of his personal estate in general terms to A. for life, with remainder over, the trustees are bound to convert into money all such property as is of a perishable or wasting nature, such as leaseholds, long annuities, &c.; the principle being that it is *primâ facie* to be presumed that a testator intends that the same property which is given to the tenant for life shall go to those in remainder, and, in order to effect such intention, wasting property must be turned into permanent property (*l*). But if it appear from the context of the will that the testator intended that the tenant for life should enjoy the property *in specie*, such indication of intention takes the case out of the general rule. Whether such an intention sufficiently appears is frequently a difficult question. A direction out of the rents to renew leaseholds and keep houses in repair (*m*); a trust to sell the property on the decease of the tenant for life (*n*), or only in a given event (*o*); a direction not to sell without the consent of all parties (*p*); and a power to trustees to retain any

Rule as to conversion with regard to perishable property.

Instances where it has been held that leaseholds, &c. shall be enjoyed *in specie*.

(*i*) *In re* Ovey, 29 C. D. 560.
(*j*) *In re* Slevin, (1891) 2 Ch. 236.
(*k*) 33 & 34 Vict. c. 34.
(*l*) Howe *v.* Earl of Dartmouth, 7 Ves. 137.
(*m*) Crowe *v.* Crisford, 17 Beav. 507.
(*n*) Alcock *v.* Sloper, 2 M. & K. 699.
(*o*) Daniel *v.* Warren, 2 Y. & C. C. C. 290.
(*p*) Hinves *v.* Hinves, 3 Hare, 609. See also Burton *v.* Mount, 2 De G. & Sm. 383.

portion of the testator's property in the same state in which the same shall be at his death, or to sell and convert the same (*q*), have been held sufficient evidence of the testator's intention that leaseholds should or might be enjoyed *in specie*. In some cases, again, where the gift of the residue has been distinguished by a mention of particular parts of the testator's property, or where the property has been pointed to specifically in the gift over, a similar intention has been inferred as to the property so specified (*r*).

A bequest of *rents* to tenant for life, whether sufficient to entitle him to enjoy *in specie*.

In *Pickup* v. *Atkinson* (*s*) it was held that a bequest of the *rents*, profits, dividends, and interests of the residue in general terms to the tenant for life, was not of itself sufficient to entitle him to enjoy leaseholds *in specie*, but in other cases the contrary seems to have been decided (*t*).

Rule as to conversion applies to all the personal estate not consisting of authorized investments.

The rule as to conversion applies not only to perishable and wearing-out property in the strict sense of the term, but also to all property not consisting of investments authorized by the will or by law.

Liability of executors who neglect to convert.

Executors are allowed a year from the testator's death for the realizing of his property, and the conversion of such part as ought to be converted. If they neglect this duty they are liable for any loss which may arise.

Mode of adjusting accounts between tenant for life and remainderman.

As between tenant for life and remainderman their respective rights in the testator's residuary estate are as follows:—The tenant for life is entitled, as from the day of the testator's death, to the whole income

(*q*) Gray *v.* Siggers, 15 C. D. 74.

(*r*) Bethune *v.* Kennedy, 1 M. & C. 114; Vaughan *v.* Buck, 1 Ph. 75; Blann *v.* Bell, 21 L. J. Ch. 811; Bowden *v.* Bowden, 17 Sim. 65; Collins *v.* Collins, 2 M. & K. 703; Harris *v.* Poyner, 1 Drew. 174; Simpson *v.* Leicester, 4 Jur. N. S. 1269.

(*s*) 4 Hare, 624.

(*t*) Goodenough *v.* Tremamondo, 2 Beav. 512; Crowe *v.* Crisford, 17 Beav. 509; Wearing *v.* Wearing, 23 Beav. 99. And see generally on this subject, in addition to the cases already cited, Sutherland *v.* Cooke, 1 Col. C. C. 498; Mills *v.* Mills, 7 Sim. 501; Morgan *v.* Morgan, 14 Beav. 72; Hood *v.* Clapham, 19 Beav. 90; Hubbard *v.* Young, 10 Beav. 203; Thornton *v.* Ellis, 15 Beav. 193; Jebb *v.* Tugwell, 20 Beav. 84; Skirving *v.* Williams, 24 Beav. 275; Chambers *v.* Chambers, 15 Sim. 183; Boys *v.* Boys, 28 Beav. 436; Vachell *v.* Roberts, 32 Beav. 140.

derived from such part of the testator's estate as is properly invested (*u*), but as to such part of the estate as is not so invested he is entitled to an annual sum equal to the interest of so much New Consols (*x*) as would have been purchased with the unconverted property if such conversion had been made at the end of the year, and the excess of income accruing from the unconverted property is to be deemed *corpus* (*y*). The following exception has, however, been made, *viz.*, that if the property is so circumstanced as that it is producing a large annual income, and is secure, but cannot be immediately converted without a loss to the estate, then a value in money will be set upon it, and the tenant for life will be allowed 4 per cent. on such value from the testator's death, the excess of income beyond 4 per cent. being treated as *corpus* (*z*).

Application of rule to reversionary property.

The rule as to conversion is to be applied for the benefit of as well as against the tenant for life, and consequently extends to any part of the testator's estate which may be reversionary. If executors in the exercise of their discretion think that a loss will arise by a conversion of reversionary property, and consequently wait until it falls into possession, their doing so will not be allowed to prejudice the tenant for life, and the Court will direct a value to be set upon such reversion at the end of the first year, and will give to the tenant for life the difference between the fund actually received and the value of the reversion as so ascertained (*a*).

(*u*) Angerstein *v.* Martin, T. & R. 232; Hewitt *v.* Morris, T. & R. 241; Taylor *v.* Clark, 1 Hare, 161.

(*x*) It is apprehended that new Consols must be considered as substituted for Three per Cent. Consols for the purpose of this rule.

(*y*) Dimes *v.* Scott, 4 Russ. 195; Taylor *v.* Clark, 1 Hare, 161; Morgan *v.* Morgan, 14 Beav. 72; Brown *v.* Gellatly, L. R. 2 Ch. 752. In Robinson *v.* Robinson, 1 D. M. & G. 247, the rights of the parties were adjusted on the principle that the executors were liable for the money which would have been produced by a conversion of unauthorized securities at the end of a year, with interest at 4 per cent., and that the tenant for life was entitled to that interest. The decision may have been right under the special circumstances of the case, but has not altered the general rule, which is as stated in the text.

(*z*) Gibson *v.* Bott, 7 Ves. 89; Caldecott *v.* Caldecott, 1 Y. & C. C. C. 312; Meyer *v.* Simonsen, 5 De G. & Sm. 723; *In re* Llewellyn's Trust, 29 Beav. 171; Brown *v.* Gellatly, *ubi supra*.

(*a*) Wilkinson *v.* Duncan, 23 Beav. 469.

Tenant for life not entitled to interim income of funds applied in payment of legacies.

It will be borne in mind that the tenant for life of a residue is entitled to the income of such residue only, and not to the income which may accrue on such part of the testator's estate as is applied in payment of legacies during the period which may intervene between the death of the testator and the actual payment of such legacies. Thus, in a case where a testator gave £16,000 in legacies, and then gave the residue of his personal estate to his wife for life with remainders over, and all his estate was in Consols at his death, it was held that the income which accrued after the testator's death, and before the payment of the legacies, on so much of the fund as was applied in payment of such legacies, did not belong to the tenant for life, but formed part of the *corpus* of the residue (*b*); and in another case it was held that where a testator bequeaths legacies, and gives his residue to a tenant for life, with remainder over, executors, though as between themselves and the persons interested in the residue they are at liberty to have recourse to any funds they please in order to pay debts and legacies, yet will be treated by the Court, in adjusting accounts between the tenant for life and remainderman, as having paid the debts and legacies not out of capital only, but with such portion of the capital as together with the income of that portion for one year was sufficient for the purpose (*c*).

Direction as to application of income desirable.

In order to prevent any question arising out of the doctrine above discussed, every will by which a residue is given upon trusts for sale and conversion, should expressly authorize the trustee to postpone such sale and conversion, and should direct that the rents and income arising from the unconverted property shall, from the testator's death, go to the same persons and in the same manner as the income of the proceeds of the conversion thereof would be applicable if such conversion had been made (*d*). Under such a direction executors

(*b*) Holgate *v.* Jennings, 24 Beav. 623.

(*c*) Allhusen *v.* Whittell, L. R. 4 Eq. 295; Lambert *v.* Lambert, L. R. 16 Eq. 320. The rule established in the first case applies to real estate. Marshall *v.* Crowther, 2 C. D. 199.

(*d*) See Wrey *v.* Smith, 14 Sim. 202; Scholfield *v.* Redfern, 2 Drew. & Sm. 173.

may carry on a testator's business for a reasonable time after his death with a view to sell it as a going concern, and the profits arising therefrom will belong to the tenant for life as income (*e*).

Destination of moneys arising from land directed to be sold.

If real estate is directed to be sold, and the proceeds of sale are absolutely bequeathed, the property from that time acquires the character of personalty, and in the event of the death of the beneficiary before a sale the proceeds would belong to his personal representatives. On the other hand, moneys which are directed to be laid out in the purchase of land, from the creation of the trust assume the character of real estate, and devolve as such on the real representatives of the beneficiary, whether he dies before the conversion or afterwards.

Election to take estate.

At any time before the conversion, the beneficiary, if *sui juris* and absolutely entitled, may elect to take the property directed to be converted in its actual state; and such election will be implied from his acts, *e.g.*, if, in the case of land directed to be sold, he grants a lease of it (*f*), or receives the rent of it for some years after the time for sale (*g*).

Heir not disinherited as to interests not disposed of.

When real estate is directed to be converted, and the whole of the proceeds of sale are not absolutely disposed of, or the disposition thereof wholly or partially fails by lapse or otherwise, a question sometimes arises as to the relative rights of the heir-at-law and the personal representatives of the testator. It is clear that the heir is not disinherited by the direction to convert, unless the whole beneficial interest in the proceeds of sale is in the event absolutely disposed of; so far, therefore, as the beneficial interest is either directly or indirectly undisposed of, or becomes so by subsequent events, the undisposed of interest belongs to the heir, and not to the next of kin (*h*); but

(*e*) *In re* Chancellor, W. N. 1884, p. 50.

(*f*) Crabtree *v.* Bramble, 3 Atk. 680; Mutlow *v.* Bigg, 1 C. D. 385.

(*g*) *Re* Gordon, 6 C. D. 531; Holder *v.* Lofts, cited 30 C. D. 656.

(*h*) Eyre *v.* Marsden, 2 Keen, 574; 1 Jarm. on Wills, 4th ed. pp. 619 *et seq.* If, however, real estate is settled by *deed* upon trust to sell for certain specified purposes, and any of those purposes fail, then

if after the failure of the disposition the heir dies, his personal representatives and not his heir are entitled to the undisposed of proceeds (*i*). The principle is clear—the trust for conversion is created for the benefit of the legatees, and not for the next of kin, so that there is no ground for depriving the heir-at-law of the undisposed of interest, simply because, under the trust for the particular purposes of the will, a sale may have taken place. In *Taylor* v. *Taylor* (*k*), a testator directed his real estate to be sold, and the proceeds to go as his personal estate, and he bequeathed all the residue of his personal estate (including the proceeds of sale) on trusts for his children equally; one of the children died, and it was held that that child's lapsed share in the proceeds should go to the heir-at-law of the testator.

IX. *In what cases precatory words in a will, or instructions by parol, or an unattested writing, create a trust.*

Precatory words create a trust, only where subject and objects are certain, and donee's option to dispose of property otherwise clearly excluded.

A gift of property, which taken alone would confer on the devisee or legatee the absolute ownership, is sometimes accompanied by what are called precatory words, *i.e.*, words expressing a hope, or desire, or belief, that the devisee or legatee will dispose of the property for the benefit of some other person or persons; and in such cases the question arises whether a trust is created. It is a general rule, that in order to have this effect, the property which is to be the subject of the trust, and the persons who are to be the objects of it, must be clearly and certainly pointed out; and it must appear from a consideration of the whole will, that the testator intended to exclude all option and discretion in the devisee or legatee to dispose of the property in any other manner than that indicated.

whether the trust for sale is to arise in the lifetime of the settlor, or not until after his decease, the property to that extent results to the settlor in personalty from the moment the deed is executed. Clarke *v.* Franklin, 4 K. & J. 257.

(*i*) Wilson *v.* Coles, 28 Beav. 215.

(*k*) 3 De G. M. & G. 190.

The following are instances in which precatory words have been held to create *a trust*:— Instances of trust.

A devise to the testator's wife of real and personal estate, in the fullest confidence that after her decease she will devise the property to the testator's family (*l*); a recommendation to the testator's daughter to dispose of the property after her death among her children (*m*); a gift by the testator to his wife, with a recommendation to her to dispose of the property by will amongst certain persons whom the testator named (*n*); a devise of copyholds to testator's wife, not doubting that she would dispose of the same to and amongst her children as she should please (*o*); a gift to a sister, with a recommendation to her, "to take such steps as she may deem best to make it sure that whatever she shall inherit under this my will shall go on her decease to her children" (*p*); a gift of residue to a wife, with a declaration that it was the testator's desire that if his children conducted themselves to her approbation she would leave the property equally among them (*q*).

It will be observed that in all the above cases the precatory words pointed to a disposition to take effect after the death of the first donee, and the effect of the decision was to cut down the absolute interest of the donee to a life interest.

In the following instances it was held that no trust was created:— Instances of no trust.

A bequest of dividends to the testator's brother to enable him to assist such of the children of ——— as he should find deserving of encouragement (*r*); a devise to the testator's wife that she might support herself and her children according to her discretion, and for that purpose (*s*); a gift to a son for his own use and benefit, well knowing he would discharge the trust reposed in him by remembering his, the testator's,

(*l*) Wright *v.* Atkyns, 19 Ves. 299.
(*m*) Malin *v.* Keighley, 2 Ves. 333.
(*n*) Horwood *v.* West, 1 Sim. & Stu. 387.
(*o*) Massey *v.* Sherman, Amb. 520.
(*p*) Cholmondeley *v.* Cholmondeley, 14 Sim. 590.
(*q*) Bonser *v.* Kinnear, 2 Giff. 195.
(*r*) Benson *v.* Whittan, 5 Sim. 22.
(*s*) Thorp *v.* Owen, 2 Hare, 607.

other sons and daughters (*t*); a gift of income to testator's wife, with request to dispose of the savings among his children (*u*); a gift to the testator's wife of the capital of a business, trusting that she would act justly and properly to and by all the testator's children (*x*); a gift to two daughters, associated with the following words:—"If they die single of course they will leave what they have amongst their brothers and sisters, or their children" (*y*); a gift of real and personal estate to A. B., his heirs, executors, and assigns, for his and their own use and benefit for ever, trusting and wholly confiding in his honour that he will act in strict conformity with the testator's wishes (*z*); a gift to a wife, her executors, administrators, and assigns to and for her and their own use and benefit, upon the fullest trust and confidence reposed in her that she would dispose of the same to and for the joint benefit of herself and his children (*a*); a gift of a legacy to a "wife to be disposed of by her will in such way as she shall think proper, but I recommend her to dispose of one-half to her own relations, and one-half among such of my relations as she shall think proper" (*b*); a gift to wife "being fully satisfied that she will dispose of same by will or otherwise, in a fair and equitable manner to our united relatives, bearing in mind that my relatives are generally in better circumstances than hers are" (*c*); a gift to wife "to and for her own use and benefit absolutely, having full confidence in her sufficient and judicious provision for my dear children" (*d*); a gift to wife "to be at her disposal in any way she may think best for the benefit of herself and family" (*e*); a gift to a married woman "for her own proper use and benefit" separately from her hus-

(*t*) Bardswell *v.* Bardswell, 9 Sim. 319,

(*u*) Cowman *v.* Harrison, 10 Hare, 234.

(*x*) Pope *v.* Pope, 10 Sim. 1.

(*y*) Lechmere *v.* Lavie, 2 M. & K. 197.

(*z*) Wood *v.* Cox, 2 M. & C. 684.

(*a*) Webb *v.* Wools, 21 L. J. Ch. 625.

(*b*) Johnston *v.* Rowlands, 2 De G. & Sm. 356.

(*c*) Reeves *v.* Baker, 18 Beav. 372.

(*d*) Fox *v.* Fox, 27 Beav. 301.

(*e*) Lambe *v.* Eames, L. R. 10 Eq. 267; *Re* Hutchinson and Tennant, 8 C. D. 540; Adams *v.* Kensington Vestry, 24 C. D. 199.

band, "the proceeds to be applied by her in the maintenance of all her children" (*f*); a gift to a daughter, her heirs and assigns, "and it is my desire that she allows A. G. an annuity of £25 during his life" (*g*).

Tendency of modern decisions against precatory trusts.

The tendency of modern decisions is against the extension of the doctrine of precatory trusts, and it is probable that many of the older cases in which a trust was held to be created would now be decided otherwise.

Verbal or written instructions create a trust, if assented to by legatee,

If a testator, either verbally or by an unattested writing, communicates to a devisee or legatee under his will his wishes that the latter shall dispose of the property given to him in a particular manner, and the devisee or legatee promises to comply with those wishes, or by his silence leaves the testator to suppose that he intends to do so, the Court will, in order to prevent a fraud, compel him to perform the promise or understanding on the faith of which he has acquired the property, and will treat him as a trustee for this purpose. But instructions contained in an unattested writing, which is not communicated to the devisee or legatee until after the testator's death, are ineffective and impose no obligation (*h*).

but not otherwise.

Rule applies whether will refers to undisclosed trust or not.

The above rule applies not only where the gift to the devisee or legatee is on the face of the will for his own benefit, but also where the will refers to an undisclosed trust. Thus, in a case where a testatrix left her personal estate to A. "to be applied by him as I have requested him to do," and it was proved that she had before making her will mentioned her intentions to A., which the latter had committed to paper and acquiesced in, it was held that a trust was created (*i*).

Gift to a trustee on undisclosed trust lapses in equity for benefit of heir at law or next of kin.

If it appears on the face of a will that a devisee or legatee is to hold the property given to him as a trustee, but the trust is not disclosed except by an unattested memorandum not communicated to A. until

(*f*) Mackett *v.* Mackett, L. R. 14 Eq. 49.
(*g*) *In re* Diggles, 39 C. D. 253.
(*h*) McCormick *v.* Grogan, L. R. 4 H. L. 82; Rowbotham *v.* Dunnett, 8 C. D. 430.
(*i*) *In re* Fleetwood, 15 C. D. 594.

after the testator's death, the beneficial interest in the property will be treated as undisposed of, and will fall into the residue, or devolve on the heir-at-law or next of kin as in the case of a lapsed gift (*k*).

X. *The effect of a charge of debts and the implied power of sale thereby created.*

Personal estate vests in executors for payment of debts.

All the personal estate of a deceased person (including his leasehold lands) vests in his executors in the first instance, although specifically bequeathed, and may be disposed of by them for the payment of the testator's debts, and the purchaser is not bound to see to the application of his purchase-money. And there is no particular time at which a presumption arises that the debts have all been paid, and consequently that the executors' right to sell has ceased (*l*).

Real estate formerly not liable to debts unless charged by will.

By the common law the real estate of a deceased person was not liable to his general debts, but if the testator by his will expressly charged his real estate with the payment of his debts, such a charge was, and of course still is, effective in equity.

In what cases a general direction for payment of debts creates a charge.

A general direction, or an expression of desire in a will that the testator's debts shall be paid, creates a charge on the real estate for their payment (*m*). But if such a direction or expression of desire is followed by the gift of a particular property for the purpose of paying debts, the *implied* charge will be considered as limited by the subsequent gift, and will be confined to the property included in such gift (*n*). Where, however, the will contains an *express* charge of debts upon the real estate, such express charge will not be cut down by the subsequent creation of a fund for the payment of the debts (*o*).

(*k*) Briggs *v.* Penny, 3 M. & G. 546.

(*l*) *In re* Whistler, 35 C. D. 561.

(*m*) 2 Jarm. on Wills, 4th ed. p. 503; Ball *v.* Harris, 4 My. & Cr. 264; Harding *v.* Gandy, 1 Dr. & W. 430.

(*n*) Thomas *v.* Britnell, 2 Ves. sen. 313; Palmer *v.* Graves, 1 Keen, 545. But see Jones *v.* Williams, 1 Col. C. C. 156.

(*o*) Coxe *v.* Basset, 3 Ves. 155; Wrigley *v.* Sykes, 21 Beav. 337.

In what cases a direction that the debts shall be paid by the executors is a charge.

A direction that the debts shall be paid by the executors does not of itself charge the real estate (*p*). If, however, the executors are also made devisees, the question whether the estate devised to them is thereby charged with the debts is one of intention to be collected from the whole of the will. Thus it has been held that a charge is created, where the devise is of all the real estate to the executor (there being only one) either beneficially or on trust, or to all the executors jointly (*q*), but not where one only of several executors is the devisee (*r*), or where the executors take unequally (*s*), or where part only of the real estate is given to them, and the rest given to others (*t*).

Mere authority insufficient.

A mere authority, as distinguished from a direction, to pay debts, does not create a charge on real estate (*u*).

A charge of debts confers a power of sale.

A charge of debts confers a power of sale for the purpose of giving effect to it. It was frequently a difficult question in the case of wills coming into operation before the passing of the Act about to be mentioned, who was or were the person or persons in whom the power of sale for payment of debts was vested (*x*). It is now, however, provided by sects. 14 to 18 inclusive of 22 & 23 Vict. c. 35, as follows:—

Where real estate is charged with debts, devisee in trust may raise money to pay them.

Sect. 14. Where by any will which shall come into operation after the passing of this Act, the testator shall have charged his real estate or any specific portion thereof with the

(*p*) Keeling *v.* Brown, 5 Ves. 359; Wasse *v.* Heslington, 3 M. & K. 495.

(*q*) Henvell *v.* Whitaker, 3 Russ. 343; Finch *v.* Hattersley, 3 Russ. 345, n.; Hartland *v.* Murrell, 27 Beav. 204; *In re* Tanqueray-Willaume, &c., 20 C. D. 465; *In re* Burgh Lawson, 41 C. D. 568.

(*r*) Warren *v.* Davies, 2 My. & K. 49.

(*s*) Symons *v.* James, 2 Y. & C. C. C. 301.

(*t*) *In re* Bailey, 12 C. D. 268.

(*u*) *In re* Head's Trustees and Macdonald, 45 C. D. 310.

(*x*) Elliott *v.* Merryman, Barn. 78; Walker *v.* Smallwood, Amb. 676; Eland *v.* Eland, 4 M. & C. 420; Shaw *v.* Borrer, 1 Keen, 559; Ball *v.* Harris, 4 M. & C. 264; Colyer *v.* Finch, 5 H. of L. Ca. 905; Storry *v.* Walsh, 18 Beav. 559; Hodkinson *v.* Quinn, 1 J. & H. 303; Robinson *v.* Lowater, 5 De G. M. & G. 572; Wrigley *v.* Sykes, 21 Beav. 337; Gosling *v.* Carter, 1 Coll. 644; Doe d. Jones *v.* Hughes, 6 Exch. 223. These cases are discussed at some length in a former edition of this work; but as they only apply to wills coming into operation before the 13th August, 1859, it is not thought necessary to do more than refer to them in this edition.

payment of his debts, or with the payment of any legacy or other specific sum of money, and shall have devised the estate so charged to any trustee or trustees for the whole of his estate or interest therein, and shall not have made any express provision for the raising of such debt, legacy, or sum of money out of such estate, it shall be lawful for the said devisee or devisees in trust, notwithstanding any trusts actually declared by the testator, to raise such debts, legacy, or money as aforesaid, by a sale and absolute disposition, by public auction or private contract, of the said hereditaments or any part thereof, or by a mortgage of the same, or partly in one mode and partly in the other, and any deed or deeds of mortgage so executed may reserve such rate of interest and fix such period or periods of repayment as the person or persons executing the same shall think proper.

Powers given by last section extended to survivors, devisees, &c.

15. The powers conferred by the last section shall extend to all and every person or persons in whom the estate devised shall for the time being be vested by survivorship, descent, or devise, or to any person or persons who may be appointed under any power in the will or by the Court of Chancery, to succeed to the trusteeship vested in such devisee or devisees in trust as aforesaid.

Executors to have power of raising money, &c., where there is no sufficient devise.

16. If any testator who shall have created such a charge as is described in the fourteenth section shall not have devised the hereditaments charged as aforesaid in such terms as that his whole estate and interest therein shall become vested in any trustee or trustees, the executor or executors for the time being named in such will (if any) shall have the same or the like power of raising the said moneys as is hereinbefore vested in the devisee or devisees in trust of the said hereditaments, and such power shall from time to time devolve to and become vested in the person or persons (if any) in whom the executorship shall for the time being be vested: but any sale or mortgage under this Act shall operate only on the estate and interest, whether legal or equitable, of the testator, and shall not render it unnecessary to get in any outstanding subsisting legal estate.

Purchasers, &c., not bound to inquire as to powers.

17. Purchasers or mortgagees shall not be bound to inquire whether the powers conferred by sections 14, 15, and 16 of

this Act or either of them, shall have been duly and correctly exercised by the person or persons acting in virtue thereof.

Sections 14, 15, and 16 not to affect certain sales, &c., nor to extend to devises in fee or in tail.

18. The provisions contained in sections 14, 15, and 16 shall not in any way prejudice or affect any sale or mortgage already made or hereafter to be made under or in pursuance of any will coming into operation before the passing of this Act, but the validity of any such sale or mortgage shall be ascertained and determined in all respects as if this Act had not been passed, and the said several sections shall not extend to a devise to any person or persons in fee or in tail, or for the testator's whole estate and interest charged with debts or legacies, nor shall they affect the power of any such devisee or devisees to sell or mortgage, as he or they may by law now do.

Operation of section where testator has made a partial provision for debts.

According to the terms of sect. 14, the power is to be vested in the trustees only where the testator has not made any express provision for raising the debts, &c. out of the estate charged. It is conceived that the simple purpose of these words is to prevent any particular provision which the testator may have made for the application of his property, or of particular parts of it in payment of his debts, from being frustrated. If, however, he has made express provision for the payment of his debts out of particular parts of his estate, and such parts prove to be insufficient for the purpose, it is presumed that the trustees might sell the remainder of the estate vested in them under the powers conferred by this section in order to meet the deficiency (*y*).

Administrator with will annexed cannot sell under sect. 16.

It has been held that an administrator with the will annexed cannot sell under sect. 16 (*z*).

Operation of 18th section.

It will be seen that under the 18th section the case of a devise to any person or persons in fee or in tail, or for the testator's whole estate and interest charged with debts or legacies, is withdrawn from the Act.

(*y*) See Wrigley *v.* Sykes, 21 Beav. 337.

(*z*) *Re* Clay and Tetley, 16 C. D. 3.

Devisee in fee subject to debts, can sell, &c., if he is also an executor.

Under such a devise, subject to debts or to debts and legacies, it is well established that the devisee, if he is also the executor or one of the executors, can sell or mortgage, and that the purchaser or mortgagee is not bound to see to the application of his money, but whether a devisee not being an executor can make a good title alone, remains undecided (*a*). If, however, land is devised to A. absolutely subject to legacies only, it is apprehended that a title cannot be made without showing the payment or release of the legacies, and if it is intended to pay them out of the purchase-money, the purchaser must see to the application of his purchase-money accordingly (*b*).

How long power remains in force under the 14th section.

The existence of the power of sale conferred by the Act is not likely to create any practical difficulty in cases coming within the 14th section. The payment of debts is thereby in effect made one of the trusts on which the trustees hold the property, and upon any sale made by them within twenty years from the testator's death, a purchaser can safely take a title from them without inquiry (*c*).

How long under the 16th section.

But there is more difficulty in cases coming within the 16th section. Suppose, for instance, that the real estate is devised to the use of A. for life, with remainder to his first and other sons in tail. During A.'s life, the executors would clearly have a power of sale for payment of debts, but on A.'s death his eldest son bars the entail and becomes owner in fee simple, and the question is, whether the executor's power still subsists, or whether the case does not come within the exception at the end of the 18th section—in other words, whether that exception applies only to devises creating a fee simple or fee tail in possession at the testator's death, or extends also to estates originally limited in remainder, so soon as they become estates in possession.

(*a*) Johnson *v.* Kennett, 3 M. & K. 624; Colyer *v.* Finch, 5 H. L. C. 905; Corser *v.* Cartwright, L. R. 7 H. L. 731; West of England Bank *v.* Murch, 23 C. D. 138.

(*b*) Dickenson *v.* Dickenson, 3 B. C. C. 18; Johnson *v.* Kennett, 3 M. & K. 630.

(*c*) *In re* Tanqueray Willaume and Landau, 20 C. D. 465.

Express provision for raising debts, &c., should be inserted.

On the whole, the above enactments cannot be considered as placing the law in relation to a charge of debts on a perfectly satisfactory footing, and the practitioner is recommended not to rely on them, but as a general rule to insert in a will an express provision for raising money to pay debts and legacies by proper trusts or powers vested in trustees for that purpose.

Liability of heir or devisee where no charge of debts.

If an owner of land dies intestate, or makes a will containing no charge of debts either express or implied, the heir or devisee is liable to the debts to the extent of the lands descended or devised, and the land itself is to be administered in equity, and there is no difference in this respect between specialty and simple contract debts (*d*).

Alienation by heir, &c., for value, good against creditors.

If the heir or devisee aliens for valuable consideration, whether by way of sale or antenuptial settlement, before any proceedings are taken for administration, the alienation is valid, and he remains liable personally for the ancestor's or testator's debts to the extent of the value of the land, as if they were his own (*e*). But a voluntary alienation, or a judgment entered up against the heir or devisee will not prevail (*f*).

So is an alienation for value by a legatee of personal estate.

An alienation by a legatee of personal estate with the assent of the executor is valid against any debts of the testator remaining unpaid (*g*).

Act extends to future liabilities.

The 3 & 4 Will. 4, c. 104, extends not only to debts due at the testator's death, but also to all liabilities which may result out of obligations entered into by him during his life (*h*).

Operation of devise for the payment of debts, as regards Statute of Limitations.

A devise or trust for the payment of debts raises no trust for the payment of those debts which have been barred by the Statute of Limitations prior to the death of the testator (*i*); and if the time allowed by the

(*d*) 7 Geo. 4 & 1 Will. 4, c. 47, ss. 2, 3, 4; 4 Will. 4, c. 104; 32 & 33 Vict. c. 46.

(*e*) Spackman *v.* Timbrell, 8 Sim. 253; Richardson *v.* Horton, 7 Beav. 123; *In re* Hedgely, 34 C. D. 379.

(*f*) Kinderley *v.* Jervis, 22 Beav. 1.

(*g*) Dilkes *v.* Broadmead, 2 D. F. & J. 566.

(*h*) Hamer's Devisees' case, 2 De G. M. & G. 366.

(*i*) Burke *v.* Jones, 2 Ves. & Bea. 275.

statute has not run out at the testator's death, such a devise or trust will not prevent the statute from running in equity after the death of the testator either as to real (*k*) or personal estate (*l*).

XI. *Devolution of real estate on death, and the mode in which the personal estate of an intestate is distributed.*

Widow entitled to £500 out of real and personal estate, where no issue.

The real and personal estate of every person dying intestate after the 29th September, 1890, leaving a widow but no issue, if its net amount or value does not exceed 500*l.*, belongs to his widow absolutely. If its net amount exceeds that sum, the widow is entitled to 500*l.* out of it, with interest at 4 per cent. per annum, from the death of the intestate, such charge to be borne by the real and personal estate rateably according to value (*m*).

Descent governed by Common Law and Inheritance Act.

Subject as above, the freehold land of a person dying intestate devolves according to the rules of descent established by the common law, as modified by the Act 3 & 4 Will. 4, c. 106, for a full statement and explanation of which the reader is referred to Stephen's Commentaries, Book II. Part I. c. xi. It will be sufficient here to state as a general result of these rules that the order of succession where the intestate (whom we may call A.) has acquired land by purchase is as follows:—

General result of rules of descent, as to order of succession.

Sons according to seniority and their issue.

Daughters equally and their issue.

(1.) First in order come A.'s eldest son and his issue *ad infinitum*, next A.'s second son and his issue, and so on to the youngest son. If A. has left no son nor issue of a son, A.'s daughters and their lineal descendants take in equal shares as between daughters, the issue of a deceased daughter representing her. As among the issue of deceased sons and daughters the descent is governed by

(*k*) 37 & 38 Vict. c. 57, s. 10.

(*l*) Evans *v.* Tweedy, 1 Beav. 55; Freake *v.* Cranefeldt, 3 M. & Cr. 499.

(*m*) 53 & 54 Vict, c. 29. It has been decided that this Act only applies where a person has died wholly intestate. The words "testamentary expenses" in sect. 6 must be taken to mean the expenses of administration. *In re* Twigg's Estate, (1892) 1 Ch. 579.

the rules (i) that males are preferred to females; (ii) that among males the eldest is preferred, while females take equally; and (iii) that the parent is always preferred to, and takes in exclusion of his own issue.

(2.) If A. has left no issue, his father succeeds. — Father.

(3.) If A. has left no issue nor a father, A.'s brothers of the whole blood and their lineal descendants take, an elder brother and his issue being always preferred to younger brothers and their issue. The issue of a dead brother represent their parent as in the case of A.'s own sons. — Brothers and sisters of the whole blood.

(4.) Then come A.'s sisters of the whole blood equally and their issue, the issue of a dead sister representing her as in the case of A.'s daughters.

(5.) Then come A.'s half-brothers on the father's side, and their issue in similar order. — Half-brothers and sisters on the father's side.

(6.) Then A.'s half-sisters on the father's side, and their issue in similar order.

(7.) Then A.'s paternal grandfather, then A.'s paternal uncles and aunts, and their issue in similar order. — Paternal grandfather, uncles and aunts and their issue.

(8.) Then A.'s more remote paternal ancestors, and their issue in similar order, the nearer ancestor and his issue being always preferred to the more remote ancestor and his issue. — Other paternal ancestors and their issue.

(9.) When all the paternal line is exhausted, the maternal ancestors and their issue take in similar order. — Maternal ancestors and their issue.

Where the intestate has himself acquired the land by descent, the descent on his death must be traced to the last purchaser, *i. e.* to the person who last acquired the land otherwise than by descent (*n*). In the application of this rule a question has arisen in the case of a man who after purchasing land dies intestate leaving two daughters, one of whom afterwards dies intestate leaving a son, whether the moiety of the deceased daughter passes entirely to the grandson, or to the other daughter and grandson equally. It has been held that the grandson takes the whole, he being in respect of that moiety the heir of the purchaser (*o*). — Descent to be traced to last purchaser.

(*n*) 3 & 4 Will. 4, c. 106, s. 2.

(*o*) Cooper *v.* France, 19 L. J. Ch. 313.

Succession to personal estate regulated (except in case of married woman) by Statute of Distributions.

The personal estate of an intestate (subject to the payment of his debts and funeral and testamentary expenses, and subject also to the provision of £500 for the widow, where there are no issue, as above mentioned) is distributable (unless the intestate is a married woman) according to the rules laid down in the Act 22 & 23 Car. 2, c. 10, as amended by 1 Jac. 2, c. 17, sect. 7. The general result of these enactments is as follows:—

General result.

Widow's share.

(1.) If the intestate (whom we may call A.) leaves a widow, she takes one-third, if there are children, and if not, one-half.

Children and their representatives.

(2.) The children take equally between them two-thirds, if there is a widow, and if not, the whole. If any child has died before A. leaving issue, the issue take *per stirpes* the share which the deceased child would have taken if he or she had survived A., and this distribution *per stirpes* takes place when *all* A.'s children have died before him leaving issue (*p*). If any child of A. (not being his heir-at-law) has any estate in land by the settlement of A., or has received any advancement from A. by way of portion, he must bring any such advancement into hotchpot (*q*).

Advancement to be brought into hotchpot.

Father.

(3.) If A. leaves no issue, his father takes one-half or the whole, according as A. has left a widow or not.

Mother, brothers and sisters, and their representatives.

(4.) If A. leaves no issue nor a father, one-half or the whole (according as A. has left a widow or not) goes to his mother (*r*) and brothers and sisters equally. If there are several brothers or sisters and some or one of them (but not all) have died leaving issue, the issue take *per stirpes* the share which their parent would have taken if living. The half-blood take in equal rank with the whole blood.

Half-blood take equally with whole blood.

Mother.

Next of kin.

(5.) If A. leaves no issue, father, brother, or sister, one half or the whole (according as A. has left a widow or not) goes to his mother (if any), and if he leaves no mother,

(*p*) *Re* Ross's Trusts, L. R. 13 Eq. 286; *In re* Natt, 37 C. D. 517, contrary to the opinion expressed in Toller, 374, and transferred to 2 Wms. Exors. (7th ed.), 1497.

(*q*) 22 & 23 Car. 2, c. 10, s. 3.

(*r*) 1 Jac. 2, c. 17, s. 7.

then to his nearest of kin in equal degree, but no representation is allowed among collaterals after brothers and sisters. No representation after brothers and sisters.

(6.) Grandparents (on both sides without distinction) being in the second degree from A. take after brothers and sisters (*s*). Grandparents.

(7.) After grandparents come uncles, aunts, nephews, and nieces (*t*), who all take *per capita*, being in the third degree. Uncles, aunts, nephews, nieces.

(8.) Then come great grandparents, and after them great uncles and aunts, great nephews and nieces, and first cousins, being in the fourth degree, and so on to kindred in the fifth and more remote degrees, all in the same degree taking *per capita*. Great grandparents, great uncles and aunts, great nephews and nieces, first cousins.

What is an advancement.

An advancement by portion within the 3rd section of the Statute of Distributions is a sum given by a parent to establish a child in life or to make a provision for such child; as, *e.g.*, on marriage, or by buying a commission or outfit for a son going into the army, or by buying the goodwill of a business, or by paying a son's admission fee to an Inn of Court, or the premium and stamp on his being articled to a solicitor, but mere annual payments will not be treated as advancements, *e.g.*, the payment of a fee to a special pleader in the case of a son going to the bar, or the price of outfit and passage-money of an officer in the army going out to India with his regiment (*u*). And a sum of money given by a father to a son, to enable him to pay a debt or debts may be an advancement, as well as money given for any other purpose (*x*).

(*s*) Strictly they ought to come in with brothers and sisters, who are also in the second degree; but before the Statute of Distributions it had been held that brothers and sisters were to be preferred to grandparents, and this principle was adhered to afterwards. 2 Wms. Exors. (7th ed.).

(*t*) It will be borne in mind that if A. had left a brother or sister, and nephews or nieces, being the children of a deceased brother or sister, the nephews or nieces would have taken a share under (*b*); but if A. leaves no brothers or sisters, nephews and nieces can only come in as above stated.

(*u*) Boyd *v.* Boyd, L. R. 4 Eq. 305; Taylor *v.* Taylor, *ib.* 20 Eq. 154.

(*x*) Boyd *v.* Boyd, *ubi supra*; *In*

Husband entitled to whole of wife's personalty.

The Statute of Distributions does not apply to the case of a wife dying possessed of personal estate. In such case the husband is entitled to administer and to take the whole for his own use (*y*).

Customs of City of London, York, &c., repealed.

The special customs concerning the distribution of personal estates of intestates which formerly prevailed in the City of London, and in the Province of York, &c., are repealed as to all persons dying after the 31st Dec. 1856, by the 19 & 20 Vict. c. 94.

Distribution of moveable property is according to law of domicile.

Moveable property wherever locally situate is distributed according to the law of the place where the intestate was domiciled at his death, but for this purpose a chattel interest in land is not regarded as moveable.

XII. *The probate of wills and the duties on probates and letters of administration, and on accounts, legacy and succession duties, and estate duty.*

Wills of personalty must be proved.

Wills of personalty must be proved and administration to the effects of intestates taken out in the Probate division of the High Court of Justice, either in the principal registry, or in the registry of the district in which the testator or intestate had a fixed place of abode at the time of his death (*z*). Recent Acts (*a*) provide that where an intestate's estate does not exceed £100, the widow or children of the intestate, if residing more than three miles from the Probate District Registry, may apply to the Registrar of the County Court, and obtain letters of administration through him.

As to probate of will relating to real estate.

Previously to the Act 20 & 21 Vict. c. 77, a will which related to land only ought not to have been proved, and the probate was not evidence of the due execution of such will as to the land; but by section 64 of the above Act it is provided that in any action at law or suit in equity where according to the existing law it would be necessary to produce and prove an

re Blockley, 29 C. D. 250, where the observations of Jessel, M. R., to the contrary in Taylor *v.* Taylor were dissented from.

(*y*) 29 Car. 2, c. 3, s. 25.
(*z*) 20 & 21 Vict. c. 77, s. 46.
(*a*) 36 & 37 Vict. c. 52; 38 & 39 Vict. c. 27.

original will in order to establish a devise of real estate, the party intending to establish on proof such devise may give notice to the other party of his intention to produce the probate or a stamped copy in evidence, and in such case the probate or stamped copy shall be sufficient evidence, although the will may not have been proved in solemn form, unless the party receiving such notice shall within four days give notice that he disputes the validity of the devise. And by other sections of the Act, the probate or a stamped copy is made conclusive evidence of the due execution and contents of the will as to real estate, when the will has been proved in solemn form or has been established in a contentious cause or matter, and the heir-at-law has been cited (*b*).

Transmission of representation.

If an executor dies, having himself by will appointed an executor, the latter becomes the executor of the original testator; but if the first executor dies intestate, his administrator does not represent the original testator, but letters of administration *de bonis non* with the will annexed of the original testator must be taken out. In like manner, if A. dies intestate, and B. takes out letters of administration to his estate and afterwards dies, the executor or administrator of B. does not represent A., but new letters of administration *de bonis non* of A. must be taken out.

If two or more persons are appointed executors and all prove the will, the representation passes to the executor of the last survivor.

Effect of renunciation by executor.

Previously to the Act above referred to, if one of two joint executors renounced probate, the renunciation might be retracted at any time, and the renouncing executor come in and prove. Consequently, if one of two joint executors renounced, and the proving executor died first, the representation did not pass to his executor; and if the renouncing executor still refused to prove, letters of administration *de bonis non* to the original testator became necessary. But it is now provided that where an executor renounces probate of a will, or dies without having taken probate, or does not appear on a citation to take probate, the right of such person in respect of the executorship shall wholly cease, and the representation to the testator and the

(*b*) 20 & 21 Vict. c. 77, ss. 61, 62, 63.

administration of his effects shall, without any further renunciation, go, devolve, and be committed in like manner as if such person had not been appointed executor (*c*).

Probate of will in exercise of power.

Probate is necessary of a will made in execution of a power and affecting personalty; but a will merely appointing a guardian need not be proved (*d*).

Probate duty.

Stamp duties on probates and letters of administration after 1st June, 1881.

By the Customs and Inland Revenue Act, 1881 (*e*), the following stamp duties are imposed on probates of wills and letters of administration in England or Ireland, viz.:—

	Duty.
Where the estate and effects for or in respect of which the probate or letters of administration is or are to be granted (*f*), *exclusive of what the deceased shall have been possessed of or entitled to as trustee, and not beneficially*, shall be above the value of £100 and not above the value of £500 . . .	At the rate of £1 for every full sum of £50, and for any fractional part of £50 over any multiple of £50:
Where such estate or effects shall be above the value of £500 and not above the value of £1,000 . .	At the rate of £1 : 5*s.* for every full sum of £50, and for any fractional part of £50 over any multiple of £50:
Where such estate and effects shall be above the value of £1,000 .	At the rate of £3 for every full sum of £100, and for any fractional part of £100 over any multiple of £100.

(*c*) 20 & 21 Vict. c. 77, s. 79; 21 & 22 Vict. 95, s. 16.

(*d*) *In re* Morton, 33 L. J. Prob. 87.

(*e*) 44 Vict. c. 12, s. 27.

(*f*) By the 23 Vict. c. 15, s. 4, the personalty which any person dying on or after the 3rd of April, 1860, shall have disposed of by will under a general power is made liable to probate duty as if it were his own.

Probate or administration duty payable only on personal estate within jurisdiction of court.

The probate or administration duty is payable in respect only of such personal estate as at the time of the death of the deceased is within the jurisdiction of the court. Consequently property which at the death is in a foreign country is exempt from duty, although it may be subsequently brought into this country by the executor. Thus it has been held that French Government *rentes* and United States stock are exempt from duty (*g*), while on the other hand the duty has been held to attach to the securities of a foreign government which were in this country at the death of the deceased, and were marketable securities here transferable by delivery only (*h*). Indian Government notes on which interest is payable in London are *bona notabilia* in England (*i*).

Duty when payable on proceeds of sale of land.

Whatever the executor receives *virtute officii* is liable to probate duty. Thus if a person enters into a binding contract to sell land, and such contract is completed after his death, duty is payable on the purchase-money (*k*). But duty is not payable in respect of the proceeds of land directed to be sold either by the will of the deceased or by a deed made in his lifetime, and which remains capable of being revoked by him up to the time of his death. Thus, where a freehold estate was conveyed by H. to trustees upon trust by sale or mortgage to pay certain debts, and to pay the residue of the proceeds to H., his executors, administrators, and assigns, the land was sold after H.'s death, and it was held that no probate duty was payable in respect of the proceeds (*l*). But if A. conveys land to trustees in trust to sell and pay the proceeds to B., and B. dies before the sale, probate duty would clearly be payable by B.'s executor in respect of such proceeds. And where land is devised in trust for sale, and there is a failure of the trusts so that the testator's heir takes the proceeds, such heir takes it as money, and on his death probate duty is payable on it, although the land still remains unsold (*m*).

(*g*) Attorney-General *v.* Dimond, 1 Cromp. & Jerv. 356; Attorney-General *v.* Hope, 1 Crom. M. & R. 530.

(*h*) Attorney-General *v.* Bouwens, 4 M. & W. 171; 7 L. J. N. S. Ex. 297. See also Attorney-General *v.* Pratt, L. R. 9 Ex. 140.

(*i*) 23 & 24 Vict. c. 5, s. 1.

(*k*) Attorney-General *v.* Brunning, 6 Jur. N. S. 1083; 30 L. J. Ex. 379.

(*l*) Matson *v.* Swift, 8 Beav. 368.

(*m*) Attorney-General *v.* Lomas, L. R. 9 Ex. 29.

Share of a partner in real estate subject to probate duty.

The share of a partner in real estate forming part of the partnership property is in equity personal estate, and liable as such to probate duty (*n*).

Desperate debts.

Desperate and doubtful debts owing to the deceased are not liable to probate duty (*o*).

Personalty disposed of under power.

Probate duty is payable in respect of personalty disposed of by a testator under a *general* power (*p*).

Where testator is domiciled abroad.

Probate duty is payable in respect of the personalty in this country of a testator domiciled abroad (*q*).

Deduction may be made for debts and funeral expenses.

In making the necessary affidavit as to the value of the estate of the deceased, the executor or administrator may deliver with the affidavit a schedule of the debts due from the deceased to persons resident in the United Kingdom and the funeral expenses, and for the purpose of the duty the aggregate amount of such debts and expenses is to be deducted from the value of the estate. The term "debts" means debts payable by law out of any part of the estate comprised in the affidavit or inventory, and does not include voluntary debts expressed to be payable on the death of the deceased, or payable under any instrument which shall not have been *bonâ fide* delivered to the donee thereof three months before the death, or debts in respect whereof any real estate may be primarily liable, or a reimbursement may be capable of being claimed from any real estate of the deceased, or from any other estate or person (*r*).

As to obtaining probate where gross value does not exceed £300.

Where the gross value of the personal estate does not exceed £300, probate or letters of administration may be obtained by application to the proper officer of the Court on payment of a deposit of fifteen shillings for fees and expenses, and if the estate exceeds in value the sum of £100 a further sum of thirty shillings for stamp duty (*s*).

(*n*) Forbes *v.* Steven, L. R. 10 Eq. 178; Attorney-General *v.* Hubbuck, 13 Q. B. D. 275. The case of Custance *v.* Bradshaw, 4 Hare, 315, which appears to decide the contrary, must be regarded as depending on its peculiar circumstances, and as no authority on the general question.

(*o*) Moses *v.* Crafter, 4 C. & P. 524.

(*p*) 23 Vict. c. 15, s. 4.

(*q*) Trevor's Taxes on Succession, pp. 35—37.

(*r*) Act of 1881, s. 28.

(*s*) Sect. 33.

Account duty (*t*).

Stamp duties at the like rates as are payable for probate must now be paid in respect of accounts of the personal property of a deceased person coming within the following descriptions, viz.: Account duty

(a) Any property taken as a *donatio mortis causâ*, or taken under a voluntary disposition purporting to operate as an immediate gift *inter vivos*, whether by way of transfer, delivery, declaration of trust, or otherwise, which shall not have been *bonâ fide* made twelve calendar months before the death of the deceased, or property taken under any gift whenever made, of which property *bonâ fide* possession and enjoyment shall not have been assumed by the donee immediately upon the gift and thenceforward retained, to the entire exclusion of the donor or of any benefit to him by contract or otherwise: for property taken as *donatio mortis causâ*, or gifts made within twelve months of death.

(b) Any property which the deceased having been absolutely entitled thereto has caused to be transferred to or vested in himself and any other person jointly, whether by disposition or otherwise (including any purchase or investment made by the deceased, either by himself alone or in concert or by arrangement with any other person), so that the beneficial interest therein or in some part thereof passes or accrues by survivorship on his death to some other person: Property transferred by deceased so as to pass to another by survivorship.

(c) Any property passing under any voluntary settlement made by deed, or any other instrument not taking effect as a will, whereby an interest in such property for life or any other period determinable by reference to death is reserved either expressly or by implication to the settlor, or whereby the settlor may have reserved to himself the right by the exercise of any power to restore to himself or to reclaim the absolute interest in such property; and for this purpose the expression "voluntary settlement" includes any trust whether expressed in writing or otherwise in favour of a volunteer, and if contained in a deed or other instrument effecting the settlement, whether such deed or other instrument was made for valuable Property passing under a voluntary settlement made by deceased.

(*t*) Act of 1881, s. 38; Customs and Inland Revenue Act, 1889, s. 11.

consideration or not as between the settlor and any other person, and the expression "property" includes the proceeds of sale thereof:

Policy of assurance kept up by deceased for benefit of a donee.

(d) Any money received under a policy of assurance effected by the deceased on his life where the policy is wholly kept up by him for the benefit of a donee, whether nominee or assignee, or a part of such money in proportion to the premiums paid by him where the policy is partially kept up by him for such benefit.

Delivery of account.

Every person who as beneficiary, trustee, or otherwise acquires possession or assumes the management of any personal estate coming within any of the above descriptions must before retaining the same for his own use, or distributing or disposing thereof, and in any case within six calendar months after the death of the deceased, deliver an account of such property to the Commissioners of Inland Revenue (*u*).

Return of stamp duty if paid on deed.

If the voluntary instrument made liable to account duty has paid the five shillings *ad valorem* settlement duty, such duty will be returned (*x*).

Account duty to be borne rateably by appointees of trust fund, and not by residuary appointee only.

In a recent case, where a trust fund comprised in a voluntary settlement for the benefit of children was appointed in specific sums to four of the children, and as to the residue to the fifth child, it was held that the account duty must be borne by all the appointees rateably, and not by the residuary appointee only (*y*).

Legacy and succession duties.

Acts relating to legacy and succession duties.

The following are the Acts now in force imposing and regulating the payment of legacy and succession duties, viz., the Legacy Duty Act, 1796, the Stamp Act, 1815, the Succession Duty Act, 1853, and the Customs and Inland Revenue Acts, 1880, 1881, 1888, and 1889 (*z*).

Legacy duty.

On what property legacy duty is payable.

Under these Acts, or some of them, legacy duty is payable (subject to special exemptions which will be mentioned presently)

(*u*) Act of 1881, s. 39.
(*x*) Sub-sect. 3.
(*y*) *In re* Croft, (1892) 1 Ch. 652.
(*z*) 36 Geo. 3, c. 52; 55 Geo. 3, c. 184; 16 & 17 Vict. c. 51; 43 Vict. c. 14; 44 Vict. c. 12; 51 Vict. c. 8; 52 Vict. c. 7.

for every legacy, specific or pecuniary, or of any other description, not being leasehold property, given by any will or testamentary instrument of any person out of his or her personal or moveable estate, and also for the clear residue (when devolving to one person), and for every share of the clear residue (when devolving to two or more persons) of the personal or moveable estate of any person (after deducting debts, funeral expenses, legacies, and other charges first payable thereout), whether the title to such residue or any share thereof accrues by virtue of any testamentary disposition or upon a partial or total intestacy (*b*).

Personal estate appointed by will under general power. *Donatio mortis causâ.*

Personal estate appointed by a will made in exercise of a general power of appointment is liable to legacy duty as if the same were the property of the testator. A donation *mortis causâ* is also subject to legacy duty (*c*).

Rate of legacy duty.

Legacy duty is payable at the following rate according to the relationship between the legatee (*d*) and the deceased, viz. :—

Where legatee is lineal descendant or ancestor,

Where the legatee is a child of the deceased, or any descendant of a child of the deceased, or the father or mother or any lineal ancestor of the deceased, £1 per cent., but this is not payable on any property which has paid probate or administration duty according to the Act of 1881 (*e*).

brother or sister, or descendant of,

Where the legatee is a brother or sister of the deceased, or any descendant of a brother or sister of the deceased, £3 per cent.

uncle or aunt, or descendant of,

Where the legatee is a brother or sister of the father or mother of the deceased, or any descendant of a brother or sister of the father or mother of the deceased, £5 per cent.

great uncle or aunt, or descendant of,

Where the legatee is a brother or sister of a grandfather or grandmother of the deceased, or any descendant of a brother or sister of a grandfather or grandmother of the deceased, £6 per cent.

in other cases.

And where the legatee is in any other degree of collateral consanguinity to the deceased than is above described, or is a stranger in blood to the deceased, £10 per cent.

(*b*) 55 Geo. 3, c. 184, Schedule, Part III.; 16 & 17 Vict. c. 51, s. 19.
(*c*) 36 Geo. 3, c. 52, s. 7.
(*d*) The term "legatee" includes any person taking on an intestacy.
(*e*) 44 Vict. c. 12, s. 41.

Succession duty.

Duty payable on successions.

Under the Succession Duty Act, 1853, succession duty is payable in respect of every succession to property on death, subject to a rule that no person charged with legacy duty will be charged also with succession duty in respect of the same acquisition of the same property (*f*), and subject also to certain special exemptions which will be mentioned presently.

Definition of "succession."

For the purposes of duty, a succession is thus defined by sect. 2 of the Act of 1853: "Every past or future disposition of property by reason whereof any person has or shall become entitled to any property or the income thereof, upon the death of any person dying after the time appointed for the commencement of this Act either immediately or after any interval, either certainly or contingently, and either originally or by way of substitutive limitation, and every devolution by law of any beneficial interest in property or the income thereof upon the death of any person dying after the time appointed for the commencement of this Act to any other person in possession or expectancy shall be deemed to have conferred or to confer on the person entitled by reason of any such disposition or devolution a 'succession,' and the term 'successor' shall denote the person so entitled, and the term 'predecessor' shall denote the settlor, disponer, testator, obligor, ancestor, or other person from whom the interest of the successor is or shall be derived."

Title by survivorship creates succession.

The above definition of a succession is supplemented by provisions to the following effect, namely (1) that where any persons have any property vested in them jointly by a title not conferring a new succession, the beneficial interest accruing to them by survivorship is to be deemed a succession derived from the deceased joint tenant as predecessor, and where any persons take a succession jointly, any beneficial interest accruing to any of them by survivorship is to be deemed a new succession derived from the predecessor from whom the joint title was derived (*g*); (2) that if a donee of a general power taking effect on death exercises it, he will, for the purpose of duty, be deemed to be entitled at the time of such exercise to the property appointed as a succession derived from the donor of the power,

Succession by exercise of power of appointment.

(*f*) Sect. 18. (*g*) Sect. 3.

and where any person having a limited power to take effect on death exercises it, the appointee will be deemed to take the property as a succession derived from the donor of the power (*h*); (3) that where any property is subject to any charge, estate, or interest, determinable by the death of any person, or at any period ascertainable only by reference to death, the increase of benefit accruing to a person on the extinction or determination of such charge, estate, or interest, is to be deemed a succession (*i*); (4) that where any disposition of property, not being a sale, and not conferring an interest expectant on death on the person in whose favour the same is made, is accompanied by a reservation or assurance of, or a contract for, any benefit to the grantor or any other person for life, or for any period ascertainable only by reference to death, such disposition confers at the time appointed for the determination of the benefit an increase of beneficial interest, so as to make the person taking the same liable to succession duty (*k*).

Succession by extinction of prior charges, or by determination of interest reserved to grantor.

Leasehold property acquired by will or devolving on an intestacy, legacies payable out of real property, and the moneys to arise from the sale, mortgage, or disposition of real property directed by a will to be sold, mortgaged, or disposed of, are liable to succession (not legacy) duty (*l*).

Leasehold property, and money to arise on sale of real property, liable to succession duty.

Under the Act of 1853, succession duty is payable at the same rate as legacy duty, according to the degree of relationship between the successor and the predecessor, and subject to the same exemption as regards the one per cent. duty in the case of property which has paid probate, or administration, or account duty (*m*).

Rate of succession duty.

Under the Customs and Inland Revenue Act, 1888 (*n*), an additional succession duty is made payable at the rate of ten shillings per centum where the successor is the lineal issue or lineal ancestor of the predecessor, and in other cases at the rate of thirty shillings per centum. But this additional duty is not payable upon the interest of a successor in leaseholds passing to him by a will, or by devolution of law, or in property liable to probate, or administration, or account duty, under the Act of 1881.

Additional succession duty.

(*h*) Sect. 4.
(*i*) Sects. 5, 6.
(*k*) Sect. 7.
(*l*) 16 & 17 Vict. c. 51, s. 19; 51 Vict. c. 8, s. 21, sub-s. 2.
(*m*) 16 & 17 Vict. c. 51, s. 10; 44 Vict. c. 12, s. 41.
(*n*) Sect. 21.

What duties payable when successor is also predecessor.

Where a person takes a succession under a disposition made by himself, then, if at the date of such disposition he shall have been entitled to the property expectantly on the death of any person dying after the 19th May, 1853, and such person shall have died during the continuance of such disposition, he shall be chargeable with duty on his succession at the same rate as he would have been chargeable if no such disposition had been made; but a successor is not liable to duty in any other case under a disposition made by himself, and no person is chargeable with duty upon the extinction or determination of a charge or interest created by himself, unless at the date of the creation thereof he shall have been entitled to the property subjected thereto on the death of some person dying after the 19th May, 1853 (*n*).

Provision as to joint predecessors.

Where the successor derives his succession from more predecessors than one, and the proportional interest derived from each of them is not distinguishable, the commissioners may agree with the successor as to the duty payable; but if no such agreement is made, the successor will be deemed to have derived his succession in equal proportions from each predecessor, and will be chargeable with duty accordingly (*o*).

Where there has been a devolution by death of a successor, only one duty to be paid at the higher rate.

Where the interest of any successor in personal property shall, before he shall have become entitled thereto in possession, have passed by reason of death to any other successor, then one duty only is payable in respect of such interest, and is due from the successor who first becomes entitled thereto in possession; but such duty will be at the highest rate which, if every such successor had been subject to duty, would have been payable by any of them (*p*).

Duty to be paid by alienee of succession.

Where, on the 19th May, 1853, any reversionary property expectant on death was vested by alienation or other derivative title in any person, such person will be charged with duty at the same time and rate as the original successor would have been chargeable if there had been no alienation, &c.; and where, *after* the 19th May, 1853, any succession, before falling into possession, has become vested by alienation or any title not conferring a new succession in any other person, the duty is payable at the

(*n*) 16 & 17 Vict. c. 51, s. 12.
(*o*) Sect. 13.
(*p*) Sect. 14.

same rate and time as if there had been no such alienation, &c.; and where the title to any succession is accelerated by the surrender or extinction of any prior interest, the duty is payable as if there had been no such acceleration (*q*). Acceleration.

Property given to any charitable or public purpose is liable to duty at 10 per cent. (*r*). Gifts to charities, &c.

No policy of assurance on life creates the relation of predecessor and successor between the insurers and the assured, and no bond or contract made by any person *bonâ fide* for valuable consideration in money or money's worth for the payment of money or money's worth after the death of any other person, creates the relation of predecessor and successor between the parties; but a disposition or devolution of the moneys payable under such policy, bond, or contract, may create a succession (*s*). Provision for policies on life and contracts for valuable consideration.

Exemptions from duty.

No legacy or succession duty is payable on a legacy or succession derived by a wife from her husband or by a husband from his wife, or on gifts to members of the Royal Family, or for charitable purposes in Ireland, or on gifts of books and other specific articles to bodies corporate for preservation and not for sale (*t*). No duty between husband and wife. Gifts to Royal Family and charity in Ireland.

No legacy or succession duty is payable when the whole estate of the deceased, or the whole succession derived from the same predecessor, does not amount to £100 (*u*). Where whole estate less than £100 in value.

Plate, furniture, or other things not yielding income are not liable to duty while enjoyed by persons who have no right to dispose of them (*x*). Plate, &c., while not disposeable.

Rules as to assessment and payment of legacy and succession duties.

Where any person chargeable with legacy or succession duty is married to a wife or husband of nearer consanguinity to the deceased or the predecessor, the duty is payable at the same rate as if the wife or the husband had been the legatee or successor (*y*).

(*q*) Sect. 15.
(*r*) Sect. 16.
(*s*) Sect. 17.
(*t*) 55 Geo. 3, c. 184, Schedule, Part III.; 16 & 17 Vict. c. 51, s. 18.
(*u*) 16 & 17 Vict. c. 51, s. 18; 43 Vict. c. 14, s. 13.
(*x*) 36 Geo. 3, c. 52, s. 14; 16 & 17 Vict. c. 51, s. 32.
(*y*) 16 & 17 Vict. c. 51, s. 11.

The value of annuities to be calculated according to tables, and to be payable by four instalments.

Where property liable to legacy or succession duty consists of an annuity, the value of the annuity is to be calculated according to the tables in the schedule to the Succession Duty Act, 1853 (*z*), and the duty thereon is made payable in four equal annual instalments, and the value is to be calculated without regard to any contingency on which it may be determinable. But if the annuity determines by death before the end of the four years, the duty is payable in proportion only to so many of the payments of the annuity as actually became due and payable; and in case the annuity determines by any other contingency than death, not only all future instalments of duty cease to be payable, but a return is to be made of so much of the duty actually paid as will reduce the same to the amount which would have been payable for such annuity calculated according to the term for which it shall have endured (*a*).

The value of annuities payable out of legacies, how to be calculated and paid.

The value of an annuity charged on a legacy is to be ascertained in the same manner, and the duty on the legacy is to be paid on its value, after deducting the value of the annuity. The duty on the annuity is to be paid by the legatee, and he is to retain the same out of the annuity (*b*).

Duty on property given to purchase annuities.

If an annuity is directed to be purchased, the duty (whether legacy or succession) will be calculated upon the sum necessary to purchase the annuity according to the before-mentioned tables, and the annuity to be purchased is to be reduced proportionably (*c*).

Duty on legacies whose value can only be ascertained by application of the allotted fund.

The duty on legacies whose value can only be ascertained by actual application of the allotted fund is to be charged on the money or effects as applied (*d*).

How duties on personal estate, &c. enjoyed by persons in succession shall be charged.

If personal estate subject to legacy or succession duty is given so as to be enjoyed by different persons in succession, the duty will be charged as follows: If all the persons interested are chargeable at the same rate, the duty is to be charged on the *corpus* and paid as if it were a gift to one and the same person; but if the persons interested are chargeable at different rates, then the persons having life or other temporary interests are to be charged on such interests as if the annual produce had been

(*z*) See 16 & 17 Vict. c. 51, s. 31.
(*a*) 36 Geo. 3, c. 52, s. 8; 16 & 17 Vict. c. 51, s. 32.
(*b*) 36 Geo. 3, c. 52, s. 9.
(*c*) Sect. 10; 16 & 17 Vict. c. 51, s. 32.
(*d*) Sect. 11; 16 & 17 Vict. c. 51, s. 32.

given to them by way of annuity, and the person who becomes absolutely entitled is to be charged with duty on the *corpus* when it falls into possession (*e*).

Duties apply to intestacies.

The duty on legacies enjoyed in succession is to be charged as such, whether the persons entitled take under the will or by intestacy (*f*).

Legacies given on contingencies.

Where a legacy is contingent the duty is payable as if it were an absolute legacy to the first legatee, although the person entitled to the benefit of the contingency may not be liable to the same duty or to any duty: and if the contingency happens and the person thus becoming entitled is chargeable with a higher rate of duty, he must pay the difference (*g*).

Legacies subjected to power of appointment, how to be charged.

Where a legacy is subject to a power of appointment in favour of special objects, the property is charged with duty as property given to different persons in succession, and if the power is exercised, the appointees are chargeable as if they had taken under the will creating the power. Where any property is given for a limited interest, and an absolute power of appointment is given to any person to whom the property would not go in default of appointment, the property is, upon the execution of the power, charged with duty as if it had been immediately given to the donee of the power, after allowing any duty previously paid in respect thereof. Where any property is given with an absolute power of appointment, and in default of appointment to the donee of the power, the property is chargeable as if it had been given to the donee in the first instance without the power (*h*).

Money left to pay duty not chargeable.

If a legacy is given with a direction to pay the duty out of some other fund, the money applied in payment of the duty is not chargeable with the duty (*i*).

Specific legacies.

Specific legacies and bequests of property not reduced into money are to be valued in the manner pointed out in the Act (*k*).

Duty on legacies not satisfied in money, &c.

Where a legacy or the subject of a succession is satisfied otherwise than by actual payment, or is released for consideration, or is compounded for, the duty is chargeable on the

(*e*) Sect. 12; 16 & 17 Vict. c. 51, s. 32.
(*f*) Sect. 15.
(*g*) Sect. 17.
(*h*) Sect. 18.
(*i*) Sect. 21.
(*k*) Sect. 22.

amount or value of the property taken in satisfaction thereof, or as the consideration for the release thereof, or composition for the same; and where any gift of personal estate is made in satisfaction of any other property, the duty is not to be paid on both subjects, but on that yielding the largest duty (*l*).

Legacy duty, by whom and when payable.

Legacy duty must be paid by the executor upon the payment of the legacy, and in default of payment the duty is a debt from the executor and also from the legatee. On payment of the legacy, the executor must take a receipt, which receipt must be stamped, and an executor paying or receiving a legacy without such receipt is liable to a penalty of £10 (*m*).

When legacy is given to different persons in succession, whether payable by executor or by trustees.

Where the duty payable on a legacy given to different persons is chargeable at one and the same rate, the executor is to pay it before he transfers or pays the legacy to the trustees of it; but if it is chargeable at different rates, payable at different times, it is to be paid by the executor, unless the legacy has been paid to or vested in any trustee, in which case the trustee is liable for the duty as if he were the executor (*n*).

Personal estate directed to be applied in purchase of real estate.

Personal estate directed to be laid out in purchase of real estate is charged with duty as personal estate, unless it is given so as to be enjoyed by different persons in succession, and then each party is to pay duty as if it had not been directed to be laid out in real estate, unless it shall have been actually so laid out before the duty accrued, but no duty shall accrue in respect thereof after it has been so laid out. If before the personal estate is laid out any person becomes entitled to an estate of inheritance in possession in the real estate to be purchased therewith, the duty is to be charged on it as personal estate and paid thereout (*o*); and this applies not only where the person so becoming entitled is the original donee, but also to every subsequent devolution of the equitable inheritance previously to the money being so laid out (*p*).

Succession duty to be paid on successor becoming entitled in possession.

Succession duty must be paid at the time when the successor becomes entitled in possession to his succession, except that if there is a prior charge or interest not created by the successor, the duty in respect of the increased value accruing on the determination of the charge or interest is payable at the time of such

(*l*) Sect. 23.
(*m*) 36 Geo. 3, c. 52, ss. 4, 27, 28.
(*n*) Sect. 15.
(*o*) Sect. 19.
(*p*) *In re* De Lancey, L. R. 5 Ex. 102; S. C., *ib.* 7 Ex. 140.

determination, and except that in the case of an annuity or property chargeable as such the duties are payable by instalments; and no duty is payable on the determination of a lease at rack rent in respect of the increase accruing to the successor on such determination (*q*).

Interest of successor in real property to be considered as an annuity.

The interest of a successor in real property will be taken to be of the value of an annuity equal to the annual value of the property according to the tables in the schedule annexed to the Act of 1853, and the duty chargeable thereon is payable (subject to the option hereinafter mentioned) by eight equal instalments, the first instalment to be paid at the expiration of twelve calendar months after the succession falls into possession, and the remaining seven instalments to be paid half-yearly; provided that if the successor die before all the instalments have become due, those that are not due at his decease will cease to be payable, except in the case of a successor who shall have been competent to dispose by will of a continuing interest in such property, in which case the instalments unpaid at his death are a continuing charge on such interest in exoneration of his other property, and are payable by the owner for the time being of such interest (*r*).

Option given by Act of 1888 as to payment of instalments.

In the case of a successor who becomes entitled to his succession upon the death of a person dying on or after the 1st July, 1888, an option is given to him either to pay the duty by eight half-yearly instalments, as provided by the Act of 1853, or by two equal moieties, whereof the first moiety is payable by four equal yearly instalments, and the second moiety is payable on the day for payment of the last instalment of the first moiety, or if not so paid, then by four equal yearly instalments with interest at 4 per cent. per annum from such last-mentioned day, and a successor availing himself of the option may tender the duty in advance, and receive interest thereon. In the event of a successor availing himself of this option, and dying before all the duty is paid, the unpaid duty will continue to be payable, subject to a reduction of so much as would have ceased to be payable if the duty had been payable by eight half-yearly instalments under the Act of 1853 (*s*). The above option is

(*q*) Act of 1853, s. 20.
(*r*) Sect. 21.
(*s*) Act of 1888, s. 22.

also given to a successor becoming entitled to his succession upon the death of a person dying before the 1st July, 1888, if no instalment of duty has become due from him, or if only one instalment has become due and has been paid before that day (*s*).

Real property directed to be sold to be charged as personalty.

The interest of a successor in moneys to arise from the sale of real property under any trust for the sale thereof, is chargeable with duty as personal property, unless such moneys are subject to any trusts for the re-investment thereof in the purchase of other real property to which the successor would not be absolutely entitled.

Personal property to be invested in land, how to be charged.

The interest of any successor in money subject to any trust for the investment thereof in the purchase of real property to which the successor would be absolutely entitled, is chargeable with duty as personal property; and money subject to any trust for the investment thereof in the purchase of real property to which the successor would not be absolutely entitled, is chargeable with duty as real property (*t*).

Allowance to donee of general power of appointment.

Where the donee of a general power of appointment becomes chargeable with duty in respect of the property appointed by him, he will be allowed to deduct from the duty so payable any duty he may have already paid in respect of any limited interest taken by him in the property.

What allowance to be made for incumbrances.

In estimating the value of a succession, no allowance will be made in respect of any incumbrance created or incurred by the successor, not made in execution of a prior special power of appointment; but an allowance will be made in respect of all other incumbrances, and for moneys laid out by the successor previously to his possession, in substantial repairs or permanent improvements; and the Act of 1853 contains further provisions as to allowances.

Allowance to be made in respect of relinquished property.

Where any successor, upon taking a succession, is bound to relinquish or be deprived of any other property, the commissioners' allowance will be made to him as may be just in respect of the value of such property (*u*).

As to compounding and payment in advance of duty.

The commissioners are empowered to compound duties, and to receive any duty in advance, and to allow discount thereon.

(*s*) Act of 1888, s. 22.
(*t*) Act of 1853, ss. 29, 30.
(*u*) See *Re* Micklethwait, 11 Exch. Rep. 452; Attorney-General *v.* Sibthorpe, 3 H. & N. 424.

Duty to be a first charge on property.

The duty is a first charge on the interest of the successor, and of all persons claiming in his right, in all the real property in respect whereof such duty is assessed: and the duty is also a first charge on the interest of the successor in the personal property in respect whereof the same is assessed while the same remains in the ownership or control of the successor, or of any trustee for him, or of his guardian or committee, or tutor or curator, or of the husband of any wife who shall be the successor; and the duty is a debt due to the Crown from the successor, having, in the case of real property comprised in any succession, priority over all charges and interests created by him, but it does not affect any other real property of the successor than the property comprised in such succession. And where any settled real property comprised in a succession is subject to any power of sale, exchange, or partition, exerciseable with the consent of the successor, or by the successor with the consent of another person, he is not disqualified by the charge of duty on his succession from effectually authorizing by his consent the exercise of the power, or exercising the power with proper consent, as the case may be, and in such case the duty is charged substitutively upon the successor's interest in all real property acquired in substitution for the real property before comprised in the succession, and in the meantime upon his interest also in all moneys arising from the exercise of any such power, and in all investments of such moneys.

What persons accountable for duty.

Trustees and other persons in whom any property, or the management of any property, subject to succession duty, is vested, and every person in whom the same is vested by alienation or other derivative title at the time of the succession falling into possession, are personally accountable for the duty, but to the extent only of the property or funds actually received or disposed of by them (*x*).

Accounts to be delivered to commissioners.

Executors, trustees, and other persons accountable for legacy or succession duty are bound to present accounts with full particulars to the commissioners, and are liable to penalties for not doing so (*y*).

Commissioners.

The commissioners are bound to deliver stamped receipts for succession duty, and also a certificate of payment, to any person

(*x*) 16 & 17 Vict. c. 51, s. 44. (*y*) 16 & 17 Vict. c. 51, s. 48.

interested in the property affected by the duty on applying for it. And every receipt and certificate purporting to be in discharge of the whole duty payable in respect of any succession or any part thereof, exonerates a *bonâ fide* purchaser for valuable consideration and without notice from such duty, notwithstanding any suppression or concealment in the account; and no *bonâ fide* purchaser for valuable consideration under a title not appearing to confer a succession is subject to any duty to which such property may be chargeable by reason of any extrinsic circumstances of which he had not notice at the time of the purchase (*z*).

Commissioners may accept composition for legacy or succession duty.

The commissioners may accept composition for legacy duty or succession duty, and may receive duty in advance and allow discount thereon (*a*).

Arrears of legacy duty and succession duty bear interest after the rate of 4 per cent.

Liability to legacy or succession duty to cease after a specified period.

No person can be made liable for payment of legacy or succession duty after the expiration of six years from the date of the settlement of the account in respect of which the duty is payable, where such account was in all respects a fair and true account and contained all the facts material to be known by the commissioners for the ascertainment of the rate and amount of duty, and no trustee, executor, or administrator is, after the expiration of such six years, liable to such duty, if it is proved to the satisfaction of the commissioners that the account rendered was correct to the best of his knowledge, information, and belief (*b*).

Purchasers and mortgagees exonerated from succession duty after a specified period.

The claim of the Crown to succession duty cannot be enforced against a purchaser or mortgagee after the expiration of six years after notice to the commissioners of the fact that the succession has accrued, or from the date of the payment of the first instalment of duty; or in the absence of any such notice or payment, after the expiration of twelve years from the happening of the event which gave rise to an immediate claim to duty, or if such period expires within six years from the 31st May, 1889, then after the expiration of six years from that date (*c*).

The following points have been decided in relation to legacy and succession duties:—

(*z*) Sects. 51, 52.
(*a*) Sects. 39, 40, 41; 44 Vict. c. 12, s. 43.
(*b*) 52 Vict. c. 7, s. 14.
(*c*) 52 Vict. c. 7, s. 12.

1. That the liability to legacy duty on the personal estate depends on the domicil of the deceased at the time of his death, all personal estate being supposed to be locally situate in the place where the owner died. If he was domiciled in England at the time of his death, his personal estate, both in England and abroad, is liable to the duty, but if he was domiciled abroad no duty is payable on his personal estate either in England or abroad (*d*). And where a man who is domiciled abroad at his death makes his will under a general power, the personal property thus appointed is exempt from legacy duty (*e*). Liability to duty depends on domicil.

2. That where a testator dies domiciled abroad, succession duty attaches to his real estate situate in this country, but not to his personal estate on the original bequest thereof; but if personal estate is given by the will of a person domiciled abroad to trustees for the benefit of persons in succession, and the fund is invested by the trustees in this country, succession duty will be payable on all future devolutions under the trusts, though the party on whom it devolves may (like the testator) be domiciled abroad (*f*). And foreign moveable property, *e. g.*, foreign government funds, comprised in a British settlement and vested in trustees subject to British jurisdiction, and recoverable by the beneficiaries in a British Court, is subject to succession duty although the beneficiaries may be domiciled abroad (*g*). Succession duty attaches irrespective of domicile of settlor.

3. That a person is liable to succession duty in respect of property to which he succeeds after the commencement of the Act of 1853, although he may have become entitled thereto in expectancy *before* the Act (*h*). Duty attaches wherever succession falls into possession after Act.

4. That section 2 of the Act of 1853 applies to every case where a person becomes entitled to property by any means upon the death of a person dying after the commencement of the Act, unless such case comes within the operation of some other section. Sect. 2 applies to all cases of succession not within other sections.

(*d*) Thompson *v.* The Advocate-General, 12 Clark & Fin. 1; *Re* Napier, 6 Exch. Rep. 217.

(*e*) *In re* Wallop's Trusts, 33 L. J. Ch. 351.

(*f*) Wallace *v.* Attorney-General, L. R. 1 C. A. 1; Attorney-General *v.* Campbell, *ib.* 5 H. L. 524; *Re* Capdevielle, 33 L. J. Ex. 306; *Re* Smith's Trusts, 12 W. R. 933; *Re* Badart's Trusts, L. R. 10 Eq. 288; *Re* Lovelace, 4 De G. & J. 340; *Re* Wallop's Trusts, 1 De G. J. & S. 656; Lyall *v.* Lyall, L. R. 15 Eq. 1.

(*g*) Cigala's Settlement Trusts, 7 C. D. 351.

(*h*) Wilcox *v.* Smith, 4 Drew. 40; Attorney-General *v.* Middleton, 3 H. & N. 125; S. C., 27 L. J. Ex. 229. See, too, Attorney-General *v.* Gell, 34 L. J. Ex. 145.

Instances of the rule.

Thus where under a marriage settlement property was settled in trust for the husband and wife successively for life, with remainder (in an event which happened) as the wife should by deed or will appoint; the husband died before the Act, and the wife died in 1856, having by her will appointed the property. It was held that as the power came into operation before the commencement of the Act, the case was not within the 4th section; that it was consequently within the general provision of the 2nd section, and that for the purpose of the duty the appointee was the successor and the original settlor the predecessor (*i*).

So, also, where by a marriage settlement property belonging to the wife's father was limited to the husband and wife successively for life, with remainder (in the event which happened) as the wife should by deed or will appoint; the wife by deed appointed the property to her father, the original settlor, who died in 1831, having devised it to a stranger in blood. The wife survived her husband, and died after the commencement of the Act. It was held that as no duty would have been payable by the father if he had survived his daughter, he being himself the predecessor as well as successor, the case was not within the 15th section; that it therefore came within the general provision of the 2nd section, and that a duty of 10 per cent. was payable by the devisee of the father (*k*).

Rule that descent is to be traced from last purchaser does not apply to succession duty.

5. That if A. dies intestate, leaving two sons, B. and C., and afterwards B. dies intestate, leaving his brother C. his heir, B., and not A., is the predecessor, and 3 per cent. is payable notwithstanding the Act 3 & 4 Will. 4, c. 106, sect. 2 (*l*).

Under 4th section, "death after commencement of Act" refers to power.

6. That the words in the 4th section, "taking effect on the death of a person dying after the commencement of the Act," refer to the power of appointment, and not to the disposition by which the power is created, or to the disposition made under the power (*m*).

4th section does not apply to joint powers.

7. That the 4th section applies to the case of one person having a general power, but not to a power given in a family settlement to a father and son jointly, where one is intended to

(*i*) *Re* Lovelace, 4 De G. & J. 340. See also *In re* Barker, 7 H. & N. 109; S. C., 30 L. J. Ex. 404; Attorney-General *v.* Mitchell, 6 Q. B. D. 548.

(*k*) Attorney-General *v.* Gardener, 32 L. J. Ex. 84.

(*l*) Lord Saltoun *v.* Advocate-General, 3 Macq. 659.

(*m*) *In re* Lovelace, *ubi supra*.

be a check upon the other. Under an appointment made in exercise of a joint power, the donor, not the donee, is the predecessor (*n*).

After appointment by one under general power, donee is predecessor.

8. That under the 4th section the donee of a general power taking effect on a death happening since the commencement of the Act, becomes, by exercising the power, the successor as to the estate appointed, as if such estate had been limited to him by the original instrument, and if such donee so exercises the power as to create a succession, the appointee pays duty upon a succession derived from the donee, and not from the original settlor (*o*).

Where a charge in reversion is created for a valuable consideration in money or money's worth, and settled, purchaser is predecessor.

9. That if A., entitled to property in remainder expectant on a life estate, for a valuable consideration in money or money's worth, charges his remainder with a sum of money in favour of B., and B. settles the sum so charged, duty will be payable on that sum on the death of the tenant for life, and for this purpose B. (and not A.) will be considered the predecessor (*p*).

Marriage is not a valuable consideration.

10. That marriage is not a valuable consideration in money or money's worth within the meaning of the 17th section (*q*).

On re-settlement by tenants for life and in tail, what duty payable.

11. That if A. is tenant for life, with remainder to his eldest son B. in tail, and on B. coming of age A. and B. disentail the property and make a re-settlement under which B. takes a rent-charge during the joint lives of A. and B., and subject to such rent-charge the property is limited to A. for life, with remainder to B. for life, with remainder to B.'s first and other sons in tail, &c., B.'s life estate is a succession under a disposition made by himself alone within the meaning of the 12th section, and not a succession derived from joint predecessors under the 13th section, and consequently B. on the death of A. will be liable to duty, and for this purpose the original settlor remains the predecessor (*r*).

Construction of 38th section as to deduction

12. That in the case mentioned in the last paragraph, B. is entitled, under section 38, to a deduction for the annuity which

(*n*) Charlton *v.* Attorney-General, 4 App. Cas. 427.

(*o*) Attorney-General *v.* Upton, L. R. 1 Ex. 224.

(*p*) *Re* Jenkinson, 24 Beav. 64; Attorney-General *v.* Yelverton, 7 H. & N. 306; 30 L. J. Ex. 333. See also *In re* Ramsay's Settlement, 30 Beav. 75.

(*q*) Floyer *v.* Banks, 33 L. J. Ch. 1.

(*r*) Attorney-General *v.* Sibthorpe, 3 H. & N. 424; Lord Braybrooke *v.* Attorney-General, 9 H. of L. Ca. 150; Attorney-General *v.* Floyer, 31 L. J. Ex. 404. See also Attorney-General *v.* Baker, 4 H. & N. 19.

for loss of property.

he loses on A.'s death, and for this purpose it makes no difference whether the re-settlement was before or after the Act (*s*).

Construction of 15th section with reference to re-settlement by father and son.

13. That if a father and son, tenants for life and in tail, resettle the property, and by such re-settlement charge it with a portion for a younger son of the father, duty is payable by such younger son at 3 per cent. as on a succession derived from his brother. The charge is not an alienation under the 15th section (*t*).

Under first branch of 15th section descent is a derivative title.

14. That a title by descent is a derivative title within the meaning of the first branch of the 15th section. Thus, where a testator devised property to his wife for life, with remainder to R.: R. died in 1844 intestate, and the wife died in 1859; it was held that the heir of R. must pay the same duty as R. would have been liable to, if living (*u*). It will be observed that the words "not conferring a new succession" are not inserted in the first branch, and it is apprehended that if R. in the above case had died after the Act came into operation, the devolution to his heir would have been a new succession, and duty at 1 per cent. only payable.

Duty where alienor dies before falling in of succession.

15. That where a succession is aliened and falls into possession after the death of the alienor, duty under section 15 is at same rate as if alienor had survived the falling into possession (*x*).

16. That where part of a child's share is advanced to him in the lifetime of his parents under the ordinary power of advancement in a marriage settlement, duty will be payable on the death of the parents under the last branch of section 15 (*y*).

On death of reversioner before Act, legacy duty payable.

17. That where the original reversioner under a settlement of personalty has died before the Act, having by will bequeathed the reversion, and such reversion falls into possession after the Act, legacy duty under the will of the reversioner is payable, but no succession duty (*z*).

(*s*) Lord Braybrooke *v.* Attorney-General, *ubi supra;* Commissioners of Inland Revenue *v.* Harrison, L. R. 7 H. L. 1; Le Marchant *v.* Commissioners of Inland Revenue, L. R. 10 Exch. 292.

(*t*) Attorney-General *v.* Cecil, L. R. 5 Exch. 263.

(*u*) Attorney-General *v.* Rushton, 33 L. J. Ex. 184. But see Attorney-General *v.* Littledale, L. R. 5 Ex. 275; S. C.; *ib.* 5 H. L. 290.

(*x*) Solicitor-General *v.* Law Reversionary Interest Society, L. R. 8 Ex. 234.

(*y*) *Ex parte* Sitwell, W. N. 1888, p. 360.

(*z*) Attorney-General *v.* Littledale, L. R. 5 H. L. 290; *Re* Chapman's Trusts, 2 H. & M. 447.

18. That if A., tenant for life, and B., tenant in remainder, join in conveying the fee simple to C. as purchaser, and C. dies before A., having devised to D. in fee, D. pays duty on his succession from C., but is not liable to further duty on the death of A. (*a*).

After alienation by tenant for life and in remainder, if purchaser dies and trustee or devisee pays duty, no further duty payable on falling in of succession.

19. That sect. 18 exempting persons who have paid legacy duty from the payment of succession duty in respect of the same acquisition of the same property applies only where the same person is called on to pay twice over; consequently, in a case where personal property was given by a testator who died in 1816 to A. for life, with remainder as she should appoint, and A. paid legacy duty on the absolute interest, and afterwards appointed to her nieces, it was held, on the death of A., that the nieces must pay succession duty as on a succession derived from the testator, notwithstanding the payment of the legacy duty by A. (*b*).

Construction of sect. 18 exempting persons who have paid legacy duty from paying succession duty "on the same acquisition of the same property."

20. That the competency to dispose by will referred to in the 21st section relates to the quantity of interest, and not to the personal capacity of the individual, and consequently the circumstance that the person becoming entitled to the succession and dying before all the instalments of duty are payable, was insane or a *feme covert*, does not exempt the estate of such person from the remaining instalments (*c*). And a tenant in tail who disentails, and thus acquires the fee, and afterwards dies before all the instalments have become payable, is not within the exemption (*d*).

Construction of 21st section as to competency to dispose.

21. That the term "necessary outgoings" in section 22 does not include the property tax, nor the cost of collecting rent during the absence of the owner abroad, nor the expenses of management incurred by trustees under a power of management conferred on them by the will (*e*).

Construction of 22nd section as to "necessary outgoings."

22. That mortgages made by a tenant for life and remainderman under a joint power of appointment reserved to them are incumbrances created by the remainderman within the meaning

Construction of 34th section as to allowance for incumbrances.

(*a*) *Re* Cooper and Allen's Contract, 4 C. D. 802.
(*b*) Attorney-General *v.* Mitchell, 6 Q. B. D. 548.
(*c*) Attorney-General *v.* Hallett, 2 H. & N. 368.
(*d*) Attorney-General *v.* Lord Lilford, 34 L. J. Ex. 44; L. R. 2 H. of L. 63.
(*e*) *In re* Elwes, 3 H. & N. 719; S. C., 28 L. J. Ex. 46; *Re* Earl Cowley, L. R. 1 Ex. 288.

of the 34th section, and consequently that the latter is not entitled to any deduction in respect of them (*f*).

Construction of term "annual value" in 26th section.

23. That the term "annual value" in the 26th section means present actual annual value, and that such value, and not possible or prospective annual value, is the basis on which succession duty is to be calculated. Consequently, where at the time when the succession accrued land was stated to be incapable of being sold or let profitably as building land, or of being used productively for agricultural or other purposes, and the Crown admitted such statement to be true, it was held by the House of Lords that no duty was payable, although the land was a few years afterwards sold at a high price as building land. It was intimated, however, by some of the law lords in giving judgment, that, but for the admission by the Crown the property would probably have been held to have a present annual value at the time when the succession accrued; for that, if it was saleable at all, the annual value might have been treated at 3 per cent. on the purchase-money, or such an annuity as might have been purchased with the amount for which the land would sell (*g*).

On sale of settled land, duty is shifted to purchase-money.

24. That if land is sold under a power of sale in a settlement (*h*), or under the provisions of the Settled Estates Act, 1877 (*i*), the purchaser takes it free from succession duty, which is shifted by the operation of sect. 42 to the purchase-money or its investments.

Certificate of Inland Revenue Office conclusive.

25. That a certificate from the Inland Revenue Office that the duty has been paid, discharges the land, and the purchaser can require no further evidence on the subject (*k*).

Estate duty.

Estate duty of one per cent. where personal estate exceeds £10,000, in addition to probate duty.

By sect. 5 of the Customs and Inland Revenue Act, 1889 (*l*), an "estate duty" of one per cent. is made payable in addition to the probate or administration or account duty whenever the value of the personal estate exceeds 10,000*l*.

(*f*) *Re* Peyton, 7 H. & N. 265; Attorney-General *v.* Lorton, 11 Ir. Com. Law. Rep. 429.

(*g*) Attorney-General *v.* Earl of Sefton, 34 L. J. Ex. 98.

(*h*) Dugdale *v.* Meadows, 6 Ch. 501.

(*i*) *In re* Warner's Settled Estates, 17 C. D. 711.

(*k*) Earl Howe *v.* Earl of Lichfield, L. R. 2 Ch. 155.

(*l*) 52 Vict. c. 7.

By sect. 6 of the same Act "estate duty" at the like rate is made payable in addition to succession duty whenever the value of the succession exceeds £10,000, and also where the value of any succession to real property under a will or intestacy does not exceed £10,000, but the value together with the value of any other benefit taken by the successor under such will or intestacy exceeds £10,000. But the duty under this section is not payable upon the value of leaseholds included in an account in respect of which value duty has been paid under sect. 5.

Also where value of succession exceeds that amount, in addition to succession duty.

Estate duty is not to be charged in respect of the estate of any person dying after the 1st June, 1896 (*m*).

Ceases on 1st June, 1896.

(*m*) Sect. 7.

No. I.

OF ALL TO WIFE OR HUSBAND.

WILL *giving everything to* WIFE *or* HUSBAND (*a*).

THIS IS THE LAST WILL of me, A. B. of, &c. I give all my property to my dear wife [*or* to my dear husband] C. B., and appoint her [*or* him] the sole executrix [*or* executor] of this my will. IN WITNESS whereof I have set my hand to this my will the —— day of ——, 18—.

(*Signature of testator.*)

Signed by the above-named A. B., as his [*or* her] last will in the presence of us, both being present at the same time, who in his [*or* her] presence and in the presence of each other have hereunto subscribed our names as witnesses.

(*Names and addresses of witnesses.*)

What passes by the will of a married woman.

(*a*) A married woman can by will dispose of all property, whether real or personal, belonging to her for her separate use at the time of her death, whether her separate ownership arises under the Married Women's Property Act or otherwise; and a will made by her in general terms will operate as an exercise of all general powers of appointment by will, whether created at the date of the will or afterwards, but it will not pass property acquired by her after the determination of the coverture. *Re* Price, 28 C. D. 709.

No. II.

WILL *of* REAL (*a*) *and* PERSONAL ESTATE; BEQUEST *of* PLATE, FURNITURE, &c., *and a* LEGACY *to* WIFE; BEQUESTS *of other* LEGACIES; DEVISE *and* BEQUEST *of* RESIDUE *to* TRUSTEES *upon trust for* SALE *and* CONVERSION; TRUSTS *of moneys to pay* FUNERAL *and* TESTAMENTARY *expenses and* DEBTS, *and to* INVEST *residue and to vary securities*; TRUSTS *of* RESIDUE *to pay the income to* WIFE *for life, and after her death for* TESTATOR'S CHILDREN; PROVISO *that* ISSUE *of deceased children shall take their* PARENT'S SHARE; POWER *to postpone* SALE *and* CONVERSION; INVESTMENT CLAUSE; POWER *to* TRUSTEES *to employ* SOLICITOR, *&c., and for* TRUSTEE, *if employed, to* CHARGE; DEVISE *of* COPYHOLD *property vested in* TESTATOR *as* TRUSTEE *or* MORTGAGEE.

OF REAL AND PERSONAL ESTATE UPON TRUST FOR WIFE AND CHILDREN.

I, A. B. of, &c., HEREBY REVOKE all former wills and testamentary dispositions made by me, and declare this to be my last will and testament. I appoint C. D. of, &c., E. F. of, &c., and G. H. of, &c. (hereinafter called "my trustees"), to be the executors and trustees of this my will (*b*); and I give to them the sum of £—— each for their trouble in acting as such executors and trustees; AND I APPOINT my dear wife —— during her life, and after her death my trustees, to be the guardian and guardians of my infant children (*c*). I GIVE all my

Commencement of will.

Appointment of executors, trustees, and guardians.

(*a*) Even if the testator has no real estate at the time of making his will, it is desirable to extend the devise to real estate, because it is possible that he may acquire some before his death.

(*b*) It is generally desirable to appoint the same persons to be executors and trustees. If different persons are appointed, it is the duty of the executors to get in the personal estate and apply it in due course of administration, and when all the debts and legacies are paid to hand over the residue to the trustees, whose functions then commence. If the personalty is insufficient for payment of debts and legacies, the trustees, and not the executors, would have to raise the deficiency out of the real estate. This separation of functions is manifestly inconvenient.

Convenience of making the same persons executors and trustees.

(*c*) A father is empowered to appoint a guardian for his infant children by deed or will by the stat. 12 Car. 2, c. 24, s. 8.

By the Guardianship of Infants Act, 1886 (49 & 50 Vict. c. 27), it is provided that on the death of the father of an infant, the mother, if surviving, shall be the guardian, either alone or jointly with any guardian appointed by the father, and the mother may by deed or will appoint a guardian or guardians after the death of herself and the father; and where guardians are appointed by both parents, they are to act jointly.

Statutory powers to father and mother to appoint guardians.

OF REAL AND PERSONAL ESTATE UPON TRUST FOR WIFE AND CHILDREN.

plate, linen, china, glass, books, pictures, prints, wines, liquors, furniture, and other household effects, and all my carriages and horses to my said wife —— absolutely; and I ALSO GIVE to her the sum of £——, to be paid within one calendar month after my death. I GIVE, &c. (*other legacies*) (*e*). I DEVISE AND BEQUEATH all my real and personal estate not hereby otherwise disposed of, unto my trustees, UPON TRUST that my trustees shall sell, call in, and convert into money the same or such part thereof as shall not consist of money, and shall with and out of the moneys produced by such sale, calling in, and conversion, and with and out of my ready money, pay my funeral and testamentary expenses and debts, and the legacies bequeathed by this my will or any codicil hereto, but so that the proceeds of real estate shall not be applied in payment of legacies unless the other moneys applicable thereto under this trust shall be insufficient for payment thereof (*f*); and shall with the consent in writing of my said wife during her life, and after her death at the discretion of my trustees, invest the residue of the said moneys, with power for my trustees from time to time with such consent or at such discretion as aforesaid to vary such investments: AND SHALL stand possessed of the said residuary trust moneys, and the investments for the time being representing the same (hereinafter called the residuary trust funds), IN TRUST (*g*) to pay the income thereof to my said wife during her life, and after her decease, IN TRUST (*g*) for all my children who being sons [have attained or (*h*)] shall attain the age of twenty-one years, or being daughters [have attained or (*h*)] shall attain that age or [shall] marry under that age, in equal shares, and if there shall be only one such child, the whole to be in trust for that one child: [PROVIDED ALWAYS that if any child of mine shall die in my lifetime leaving a child or children who shall survive me, and being a son or sons shall attain the age of twenty-one years, or being a daughter or daughters shall attain that age or marry

Gift of plate, &c., to wife, and a legacy.

Other legacies.

Devise and bequest of residue of real and personal estate to trustees, in trust to sell and convert and invest proceeds.

To pay income to wife for life, and after her death for children equally.

Proviso that share of child dying before testator shall go to his or her children.

A mother may also provisionally appoint a person to act as guardian jointly with the father, and in that case the Court, if it considers the father unfit to act alone, may confirm the appointment.

(*e*) For forms of legacies, see Precedent No. III.

(*f*) Under the Customs and Inland Revenue Act, 1888, s. 21, a legacy payable out of real estate is subject to a higher duty than one payable out of personal estate.

(*g*) For variations of the trusts of the residue, see Precedent No. IV.

(*h*) If all the children are under twenty-one at the date of the will, the words "have attained or" may be omitted.

OF REAL AND PERSONAL ESTATE UPON TRUST FOR WIFE AND CHILDREN.

under that age, then and in every such case the last-mentioned child or children shall take (and if more than one, equally between them) the share which his, her, or their parent would have taken of and in the residuary trust funds if such parent had survived me and attained the age of twenty-one years (*i*)].

Advancement clause.

And I also declare that my trustees (*k*) may, with the consent in writing of my said wife during her life, and after her decease at their own discretion, raise any part or parts not exceeding together one moiety of the vested or presumptive share of any child [or grandchild] of mine under this my will, and apply the same for his or her advancement, preferment, or benefit, as my trustees shall think fit.

Power to postpone sale and conversion.

And I also declare that my trustees may postpone the sale and conversion of any part of my real and personal estate for so long as they shall think fit (*l*); and that the rents, profits, and income to accrue from and after my decease of and from such part of my estate as shall for the time being remain unsold and unconverted shall after payment thereout of all incidental expenses and outgoings be paid and applied to the person or persons and in the manner to whom and in which the income of the proceeds of such sale and conversion would for the time being be payable or applicable under this my will if such sale and conversion had been actually made.

Power to trustees to manage unsold

And I also declare that as regards any real or leasehold property remaining unsold, my trustees shall be at liberty to let

(*i*) It seems desirable, as a general rule, to provide for the case of a child of the testator dying in his lifetime leaving issue, as otherwise if such event should happen, it would be necessary for the testator to make a codicil, the case not being within sect. 33 of the Wills Act. See Brown *v.* Hammond, John. 210. But if the relative ages of the testator and his children are such that it is improbable that any child dying before the testator will leave issue, or the provision is otherwise not desired, the words in brackets may be omitted.

(*k*) A maintenance clause is unnecessary. See Conveyancing Act, 1881, s. 43.

(*l*) In cases where the nature of the testator's property renders it advisable, the following words may be added:—

"Notwithstanding that the property the sale or conversion whereof shall be so postponed may be of leasehold tenure, or may be otherwise of a perishable or wearing-out nature; and if any part of my estate shall be of a reversionary nature, the same shall not be sold or converted into money until it falls into possession, unless my trustees shall think it probable that a loss will arise to my estate by postponing the sale and conversion thereof; and I declare that the rents, &c." (*as above*).

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or demise the same either from year to year, or for any term of years, at such rent and subject to such covenants and conditions as they shall think fit; to accept surrenders of leases and tenancies; to cut timber, to expend money in repairs (*m*) and improvements; and generally to manage the property according to their absolute discretion. AND I ALSO DECLARE that the proceeds of any timber sold by my trustees shall be considered as income, and that any money required for repairs or improvements may be raised either out of income or out of the capital of my estate as my trustees shall, under the circumstances, think fair and equitable. [AND I ALSO DECLARE that all moneys liable to be invested under this my will may be invested (*n*) in any stocks, funds, or securities authorized by law for trust funds, or in the purchase of inscribed stock of any British colony, or on mortgage of any leasehold houses or land in England or Wales held for any term having 60 years to run at the time of the investment.] AND I ALSO DECLARE (*o*) that the power of appointing new trustees conferred by statute shall for the purposes of this my will be vested in my said wife during her life. AND I ALSO DECLARE (*p*) that the executors and trustees for the time being of this my will may, instead of acting personally, employ and pay a solicitor or other

real or leasehold property.

Investment clause.

Provision as to appointment of new trustees.

Power to executors and trustees to employ solicitor, &c., and for trustee, if employed, to charge.

(*m*) A tenant for life cannot be compelled to keep the property in repair (Powys *v.* Blagrave, Kay, 495), and it is, therefore, desirable to confer a power of expending money in repairs and improvements on the trustees. In the absence of such a power, it would be the duty of the trustees, if the property is out of repair, to apply to the Court for directions; and in that case the Court would apportion the costs between capital and income in a mode equitable to tenant for life and remainderman, and would not throw the whole burden on the former. *In re* Hotchkys, 32 C. D. 408.

(*n*) See p. 294, n. (*d*), *supra*.

If the testator holds railway or other shares not fully paid up, the following power will be found useful:—

Power to pay calls on railway or other shares, and to accept or refuse allotments of new shares.

AND I DECLARE that it shall be lawful for my trustees to pay out of my estate any call or calls upon any shares which I may at the time of my decease hold in any railway or other company, and also to accept or refuse any new shares or stock in any such railway or other company which may be allotted to them in respect of any shares or stock therein for the time being, and to pay out of my estate any call or calls to become due in respect of any new shares or stock which may be accepted by them.

(*o*) It is considered that the statutory power may safely be relied on; but if it is preferred to insert in the will an express power, a form of such a power will be found in a subsequent Precedent, p. 601.

(*p*) See p. 296.

person to transact any business or do any act required to be done in connection with the administration of my estate or the trusts hereby declared, including the receipt and payment of money, and that any executor or trustee, being a solicitor, or other person engaged in any profession or business, may be so employed, and shall be entitled to charge and be paid all professional or other charges for any business or act done by him or his firm in connection with the trust, including any act which an executor or trustee, not being a solicitor or other person engaged as aforesaid, could have done personally. OF REAL AND PERSONAL ESTATE UPON TRUST FOR WIFE AND CHILDREN.

[I DEVISE (*q*) all copyhold property (if any) vested in me as a trustee or mortgagee to the use of such person or persons as my trustees shall, within twenty-one years after my death, by deed appoint; and in default of and until such appointment I DEVISE the same unto my trustees, subject to the trusts and equities affecting the same respectively, and so that the money secured on any mortgage shall be deemed part of my personal estate.] Devise of copyhold, trust, and mortgage estates.

IN WITNESS, &c.

No. III.

BEQUESTS *of* SPECIFIC *and* PECUNIARY LEGACIES *and* ANNUITIES, *including* GIFTS *of* LAND *and* MONEY *for* CHARITABLE PURPOSES. LEGACIES.

1. I GIVE all my plate, jewels, trinkets, linen, china, glass, books, pictures, prints, wines, liquors, furniture, and other household effects, unto my wife absolutely. Plate, &c. to wife absolutely.

2. I GIVE and confirm to my dear wife all the jewels, trinkets, and personal ornaments, worn or used by her in my lifetime; and I also give to her all my wines, liquors, and other consumable stores. Trinkets and consumable stores to wife.

(*q*) This will be inserted if the testator is tenant on the court rolls of any copyhold property as a trustee or mortgagee. See 50 & 51 Vict. c. 73, s. 45.

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Gift to wife of articles to be selected by her.

3. I AUTHORIZE my wife to select out of my plate, linen, china, glass, books, pictures, prints, furniture, and other household effects, such articles as she may desire to have, and I give the articles to be so selected by her unto my said wife absolutely.

Plate, &c. to wife for life, then to son.

Inventory to be made.

4. I GIVE my plate and plated articles, books, pictures and prints, unto my trustees, IN TRUST to permit my wife, ——, to use and enjoy the same during her life, and after her death, IN TRUST for my son, ——, absolutely: AND I DIRECT my trustees to make an inventory of the articles included in the foregoing bequest, one copy whereof shall be signed by my trustees, and delivered to my said wife, and another copy shall be signed by my said wife, and retained by my trustees; AND I DECLARE that my trustees shall not be bound to see to the preservation of the said articles, nor be answerable for any loss or injury which may happen thereto during the life of my said wife.

Bequest of leasehold house and furniture to trustees for wife during widowhood, she paying rent, &c.,

and afterwards to fall into residue.

Trustees to make an inventory.

5. I GIVE my leasehold dwelling-house, being No. ——, &c. (*describing it*), and all my furniture and household effects being in or about or appropriated or belonging to the said dwelling-house, other than and not being plate or plated articles, books, pictures, or prints, unto my trustees, IN TRUST for my said wife during her life if she shall so long continue my widow, she paying the ground rent, and all rates, taxes, and outgoings payable in respect of the said dwelling-house, and observing and performing the covenants contained in the lease under which the same is or at my decease shall be held (*a*): AND I DECLARE that from and after the decease or second marriage of my said wife (which shall first happen), the said dwelling house, furniture, and household effects, shall fall into and form part of my residuary estate: AND I DIRECT that my trustees shall, as soon as conveniently can be after my decease, cause an inventory to be made of the furniture and other household effects hereinbefore bequeathed for the benefit of my said wife during her widowhood, and that one copy of such inventory be signed by my trustees, and delivered to my said wife, and that another copy thereof be signed by my said wife, and retained by my trustees: AND I DECLARE that after the delivery to my said

Trustees not to be bound to

(*a*) In the absence of these words, the tenant for life would not be bound to keep the property in repair, so as to prevent a forfeiture under the covenants. *Re* Courtier, 34 C. D. 136.

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wife of the said furniture and effects, my trustees shall not be obliged to see to the preservation of the same or any of them, nor be answerable for any loss or injury thereof which may happen during the widowhood of my said wife: AND I ALSO DECLARE that my trustees shall not be bound to see that my said wife duly pays the rent and observes and performs the covenants and conditions reserved by and contained in the lease of my said dwelling-house, nor shall they be liable for or in respect of any forfeiture or loss which may arise by reason or in consequence of the non-payment by my said wife of the said rent, or the breach by her of any of the said covenants and conditions: AND I ALSO DECLARE that it shall be lawful for my trustees at any time or times during the widowhood of my said wife, with her consent in writing, to sell the said dwelling-house and also the said furniture and other household effects bequeathed therewith, or any of them, or any part thereof respectively, and in such case the moneys to arise from such sale shall sink into and form part of my residuary personal estate.

see to preservation of chattels.

Trustees not to be bound to see that wife pays rent, &c.

Power for trustees with consent of wife to sell house, furniture, &c.

6. I GIVE all my jewels, trinkets, plate, linen, china, glass, books, pictures, prints, furniture, and household effects, unto my daughters (*naming them*), or such of them as shall survive me, to be fairly and equally distributed among them in such manner as they shall agree upon, or in case they are unable to agree, then as shall be settled by my trustees, whose decision shall be final.

Jewels, &c., to daughters to be distributed among them by trustees.

7. I GIVE the following legacies (namely) To —— the sum of £——, To —— the sum of £——, &c., &c. AND I DECLARE that all the said legacies shall be free from legacy duty. [AND I ALSO DECLARE (*b*) that all legacies given to married women shall be for their respective separate use.]

Pecuniary legacies.

8. I GIVE the sum of £—— to C. D., and if he shall die in my lifetime leaving issue, I give the said sum of £—— to my trustees IN TRUST for such children of the said C. D. as being sons attain the age of twenty-one years, or being daughters attain that age or marry under that age, in equal shares; and if

Legacy with substitution of issue if legatee dies before testator.

(*b*) It seems desirable to insert this declaration, having regard to sect. 19 of the Married Women's Property Act, 1882. If it is omitted, the legacy would be considered as not given to her for her separate use for the purpose of any covenant or provision relating to her after-acquired property contained in her marriage settlement (see *In Re* Whitaker, 34 C. D. 227), which would probably be contrary to the testator's wish.

Reason why a legacy to a married woman should be given to her for her separate use.

LEGACIES.

there shall be only one such child, the whole to go to that one child: AND I DECLARE that the presumptive share of every infant under this trust shall be invested by my trustees, and shall be deemed to be property held in trust for that infant within the meaning of sect. 43 of the Conveyancing and Law of Property Act, 1881, and the income thereof shall be applied accordingly (*a*); and if no child of the said C. D. shall live to attain a vested interest in the said legacy, the same shall fall into my residuary estate.

Several legacies with similar substitution in each case.

9. I GIVE to —— (*names*) the sum of £—— each free from legacy duty. AND I DECLARE that if any of the said legatees shall die in my lifetime leaving issue, then and in every such case I give the legacy which the person so dying would have taken if he or she had survived me unto my trustees, IN TRUST for his or her children, who being sons &c. (*as in No.* 8). AND if no child of the legatee so dying as aforesaid shall live to attain a vested interest in the said legacy, the same shall fall into my residuary estate.

Gift of legacy with direction that same shall not lapse if he leave issue.

10. I GIVE the sum of £—— to C. D. AND I DECLARE that if the said C. D. shall die before me, and any issue of his shall be living at my death, the gift of the said legacy shall not lapse but shall take effect as if the death of the said C. D. had happened immediately after my death.

Gifts of legacies with similar direction.

11. I GIVE to (*names and amounts of legacies*). AND I DECLARE that if any of the said legatees shall die before me, and any issue of the legatee so dying shall be living at my death, then and in every such case the legacy hereby given to the legatee so dying shall not lapse, but shall take effect as if the death of the legatee had happened immediately after my death.

Legacy to trustees for benefit of a daughter for life, and afterwards for her children and issue *per stirpes*.

12. I GIVE the sum of £—— unto my trustees UPON TRUST that they shall invest the same, with liberty from time to time to vary the investments thereof, and shall stand possessed of the said legacy of £——, and the investments thereof, UPON the trusts following (that is to say), IN TRUST to pay the income thereof to my daughter, G. H., of, &c. (the widow of, &c.), during her life: AND AFTER her death, IN TRUST for —— (*names*), the five children of the said G. H., or such of them as shall survive me (*b*), and such children (if any) of any one or more of them the

(*a*) See *In re* George, 5 C. D. 837; *In re* Dickson, 29 C. D. 331.
(*b*) It is assumed that all the children of G. H. have attained 21.

said (*five children*) who may die in my lifetime, as being sons attain the age of twenty-one years, or being daughters attain that age or marry under that age; the objects of this trust to take in equal shares, except that the children of any deceased child of the said G. H. shall take between them the share only which their parent would have taken if he or she had survived me.

Legacy to trustees for the income to be applied for the benefit of a lunatic brother, and subject thereto to fall into residue.

13. I GIVE the sum of £—— to my trustees, IN TRUST that my trustees shall invest the same, with power from time to time to vary the investments thereof, AND shall, during the life of my brother O. P., now residing at —— House under the care of Dr. ——, apply the income of the said trust fund, or a competent part thereof, in or for the maintenance, support, and benefit of the said O. P., with liberty to continue him in the institution where he now resides, or to remove him from thence and place him under the care of some other person or persons, and generally to arrange and provide for the support and comfort of the said O. P. in such manner as they shall in their uncontrolled discretion think fit: And subject to the foregoing trust the said sum of £——, and the trust fund representing the same, and the income thereof not required for the purpose aforesaid, shall sink into and form part of my residuary estate.

Authority to trustees to make an allowance not exceeding a certain annual amount to an improvident brother,

with discretionary powers to discontinue or suspend same.

14. I EMPOWER my trustees during the life of my brother R. S., if they shall in their discretion think proper, but not otherwise, to make an allowance to the said R. S., or to his wife (if any), of such an amount, and either by quarterly, monthly, or other payments, and generally in such manner as my trustees shall think fit, provided that the amount of such allowance in any one year shall not exceed £——, and my trustees may either pay the said allowance into the hands of the said R. S., or into the hands of his wife, or may apply the same for his or her benefit in such manner as they shall think fit; AND I expressly declare that it shall be in the absolute discretion of my trustees whether they will make any such allowance or not, and they may at any time discontinue or suspend the same, either wholly or partially, without assigning any reason for so doing; AND I also empower my trustees to set apart and appropriate and invest in their names a sufficient part of my estate to provide such allowance as aforesaid; AND I declare that subject to the said allowance, the fund so set apart, and the income thereof not required for the purpose aforesaid, shall sink into and form part of my residuary estate.

LEGACIES.

Legacies to servants.

15. I GIVE to each of my servants who shall be living with me at my death, and shall have been in my service for twelve calendar months at least, the sum of £—— [*or* a sum equal to one year's wages], in addition to the wages then due to him or her (*d*).

Charitable legacies.

16. I GIVE the following charitable legacies, free from legacy duty, namely:—To the —— Infirmary the sum of £——, to the —— Hospital the sum of £——, to the —— Society the sum of £—— (*state other charitable legacies*); AND I DECLARE that the receipt of the respective treasurers of the aforesaid institutions shall be a sufficient discharge for the said legacies respectively.

Gift of legacy for building and endowing an almshouse.

17. I GIVE the sum of £—— unto (*trustees*), IN TRUST that the said trustees shall therewith establish an almshouse for —— poor persons, being residents in the parish of ——, in manner following (that is to say): The said trustees shall, with the sanction of the Court or a judge thereof, or of the Charity Commissioners under sect. 8 of the Mortmain and Charitable Uses Act, 1891, apply a competent part of the said legacy in purchasing a piece of land in the said parish as a site for the almshouse, and shall expend a further part of the said legacy in erecting a suitable building on the said piece of land, and shall invest the remainder of the said sum of £—— in any investments authorized by law for charitable trust funds, with power to vary the investments thereof from time to time; AND shall with and out of the income arising from such investment keep the said almshouse in proper repair, and insured against fire, and shall apply the surplus of the said income in making a weekly allowance to each of the inmates of the said almshouse. (*Insert directions as to the qualifications of income, and any rules and regulations which the testator may wish to impose.*) AND I DECLARE that the power of appointing new trustees conferred by sect. 31 of the Conveyancing and Law of Property Act, 1881, shall apply to the foregoing trust.

Gift of a piece of land and a legacy to establish an almshouse.

18. I GIVE all that piece of land (*describing it*), and the sum of £—— unto —— (*trustees*), IN TRUST that the said trustees shall therewith establish an almshouse, &c. (*as in No.* 17), in manner following (that is to say): In the first place the said trustees shall, with the sanction of the High Court or of a judge

(*d*) It will be borne in mind that the exemption from legacy duty of legacies under £20 is now repealed. See 44 Vict. c. 12, s. 42.

thereof, or of the Charity Commissioners under sect. 8 of the Mortmain and Charitable Uses Act, 1891, retain the said piece of land or so much thereof as shall be required as a suitable site for the said almshouse, including a convenient garden and appurtenants thereto: AND if the whole of the said piece of land shall not be required for the purpose aforesaid, shall sell the remainder thereof and add the proceeds thereof to the said sum of £——, and shall with and out of the said sum of £—— and such sum (if any) as shall be added thereto as aforesaid, erect a suitable building for the said almshouse; and shall invest the residue of the said money, &c. (*as in No.* 17 *to end*).

Gift of annuities.

19. I GIVE the following annuities (free from legacy duty), namely, an annuity of £—— to —— during her life, and an annuity of £—— to —— and —— his wife and the survivor of them for their lives and the life of the survivor of them; AND I DIRECT that the said several annuities shall be paid quarterly, the first quarterly payment to be made at the expiration of three calendar months after my decease: AND I DIRECT my trustees to appropriate and set apart and invest such a sum of money as will, when invested, produce by the income thereof an annual sum equal to the amount of the annuities or annuity for the time being payable under this my will, and to apply the income or (if necessary) the corpus of the fund so appropriated in payment of the said annuities or annuity, which fund shall on the dropping of the respective annuities fall into and form part of my residuary estate; and as each annuity ceases, I authorize my trustees to transfer to the residuary legatee a corresponding part of the said appropriated fund, retaining only such part thereof as at the time of such transfer will be sufficient to produce by the income thereof an annual sum equal to the then subsisting annuity or annuities.

Gift of life annuity to be purchased from Government or from some insurance office.

20. I GIVE to C. D., of, &c., an annuity of £—— for her life, to commence from my decease, and for this purpose I direct my trustees to purchase such an annuity in the name of the said C. D. out of my estate, either from the Government or from some insurance or annuity company; AND I direct that until such purchase shall be made, my trustees shall pay the said annuity to the said —— out of my estate.

No. IV.

FOR WIFE AND CHILDREN.

TRUSTS *of a* RESIDUE *for* WIFE *and* ISSUE, *being variations of the trusts in Precedent No. II.* (1.) *Where the* WIFE *takes a* LIFE INTEREST *with a* POWER *of* APPOINTMENT *among the* ISSUE; (2.) *where the* WIFE *takes an interest during* WIDOWHOOD *only, and a* POWER *of* APPOINTMENT *among the* ISSUE; (3.) *where the* WIFE *takes an interest during* WIDOWHOOD *in a* MOIETY *only, and if she* MARRIES *again an* ANNUITY *during the rest of her life;* (4.) *where the* RESIDUE *is* DIVIDED *among the* CHILDREN *and the* ISSUE *of* DECEASED CHILDREN *per stirpes;* (5.) *where the* VESTING *of the shares of* CHILDREN *and* GRANDCHILDREN *is* POSTPONED *until the age of* TWENTY-FIVE; (6.) *where the* CHILDREN *are to bring into* HOTCHPOT *past and future* ADVANCES; (7.) *where* SHARES *of* DAUGHTERS *are* SETTLED *on them and their* CHILDREN *with* POWER *to give* LIFE INTEREST *to* HUSBAND; (8.) *where there are* TWO DAUGHTERS *only who take equally, and their* SHARES *are* SETTLED; (9.) *where there are several* DAUGHTERS *and one* SON, *and* DAUGHTERS *take* SPECIFIC SUMS *which are* SETTLED *on them, and* SON *takes* SURPLUS; (10.) *where one of the* SONS *is an* IMPROVIDENT PERSON, *and his* SHARE *is* SETTLED *so as to protect it against* CREDITORS, *&c.*

Trust to pay income to wife for life, then for issue as she shall appoint by deed or will, and in default of appointment for children equally, sons at 21, and daughters at 21 or marriage.

1. IN TRUST to pay the income thereof to my said wife during her life, and after her decease IN TRUST for my children or any of them or any of their issue as my said wife shall by any deed or deeds or by her will appoint, and in default of such appointment and so far as any such appointment shall not extend, IN TRUST for all my children who being sons [have attained or] shall attain the age of twenty-one years, or being daughters [have attained or] shall attain that age or [shall] marry under that age, in equal shares, and if there shall be only one such child, the whole to be in trust for that one child: [PROVIDED ALWAYS that if any child of mine shall die in my lifetime leaving a child or children who shall survive me, and being a son or sons

Proviso that share of child dying before testator shall go to his or her children.

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shall attain the age of twenty-one years, or being a daughter or daughters shall attain that age or marry, then and in every such case, and in default of any appointment by my said wife to the contrary, the last-mentioned child or children shall take (and if more than one, equally between them) the share which his, her, or their parent would have taken of and in the residuary trust funds if such parent had survived me and attained the age of twenty-one years (*a*)]: PROVIDED ALSO that no child [or grandchild] of mine who or any of whose issue shall take any part of the residuary trust funds under any such appointment as aforesaid shall be entitled to any share of the unappointed part of the residuary trust funds without bringing the share or shares appointed to him or her, or to his or her issue, into hotchpot and accounting for the same accordingly, unless my said wife shall by any such appointment as aforesaid direct the contrary. (*Advancement clause, supra*, p. 565.)

Hotchpot clause.

2. IN TRUST to pay the income thereof unto my said wife during her life if she shall so long remain my widow, and from and after her decease or second marriage (which shall first happen), IN TRUST for my children or any of them or any of their issue as my said wife shall during her widowhood by any deed or deeds, or, if she shall not marry again, by her will, appoint; and in default, &c. (*Trusts for children; proviso that share of child dying before testator shall go to his or her children; hotchpot clause, as above*); AND I declare that my trustees may with the consent of my said wife during her widowhood, and afterwards at their own discretion, raise, &c. (*Advancement clause, supra*, p. 565.)

Trust to pay income to wife for widowhood, and afterwards for children or issue as she shall during widowhood by deed, and if she does not marry again by will, appoint, and in default of appointment for children equally.

3. AND shall stand possessed of the said residuary moneys and the investments representing the same (hereinafter called "the residuary trust funds"), upon the trusts following (that is to say): As to one moiety thereof, IN TRUST to pay the income of the said moiety to my said wife during her life, if she shall so long remain my widow, and if she shall marry again, then from and after her second marriage, IN TRUST out of the said income to pay to my said wife during the rest of her life an annuity of £—— by equal half-yearly payments, the first payment thereof to be made at the expiration of six calendar months from the

As to moiety to pay income to wife during widowhood, and if she marries again, annuity to be paid to her.

(*a*) See note (*i*), p. 565.

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date of such marriage, AND as to the said moiety from and after the decease or second marriage of my said wife, and in the event of such second marriage subject to the said annuity, and as to the other moiety of the residuary trust funds from and after my decease, IN TRUST for all, &c. (*Trusts for children, as above.*)

Subject thereto trust for children equally.

Trusts for children and grandchildren (the issue of deceased children) *per stirpes.*

4. IN TRUST for such children of mine living at my decease, and such grandchildren of mine (being the issue of my deceased son ——, or of any other child of mine who may die in my lifetime) as being male [have attained or] shall attain the age of twenty-one years, or being female [have attained or] shall attain that age or shall marry under that age; the objects of this trust to take in equal shares, except that the issue of a deceased child of mine shall take between them the share only which their parent would have taken if he or she had survived me and attained the age of twenty-one years.

Trusts for children and grandchildren *per stirpes*— to vest at 25.

5. IN TRUST for such children of mine living at my decease, and such grandchildren of mine (being the issue of any child or children of mine dying in my lifetime) as being male shall attain the age of twenty-five years, or die under that age leaving issue, or being female shall attain the age of twenty-five years or marry under that age; the objects of this trust to take in equal shares, except that the issue of a deceased child of mine shall take between them the share only which their parent would have taken if he or she had survived me: PROVIDED ALWAYS and I declare (*b*) that during the minority of any child or grandchild of mine who if of the age of twenty-five years would for the time being be entitled in possession to a share of the residuary trust funds under the foregoing trusts, my trustees may apply the whole or any part of the income of the expectant share of such minor for or towards his or her maintenance and education, with liberty to pay the same to the guardian or guardians of such minor for the purpose aforesaid, without being liable to see to the application thereof; and shall accumulate the residue (if any) of the said income by investing the same and the resulting income thereof to the intent that such accumulations shall be added to the principal share from which the same shall have

Maintenance lause.

Accumulation.

(*b*) Sect. 43 of the Conveyancing Act, 1881, does not apply where a child's share does not vest until the age of twenty-five years.

FOR WIFE AND CHILDREN.

proceeded, and follow the destination thereof, but my trustees may at any time resort to the accumulations of any preceding year or years and apply the same for or towards the maintenance and education of any person for the time being presumptively entitled thereto: PROVIDED ALSO and I declare that every child or grandchild of mine who has attained the age of twenty-one years, and who if he or she had attained the age of twenty-five years would be entitled in possession to a share of the residuary trust funds under this my will, shall be entitled to receive the whole income of his or her expectant share until the same shall have become vested or he or she shall previously die: and if any daughter or granddaughter of mine shall marry while an infant, the income of the share (if any) of the residuary trust funds to which she shall for the time being be entitled in possession under this my will may be paid to her, and her receipt shall be a sufficient discharge for the same: PROVIDED ALSO and I declare that, &c. (*Advancement clause, supra*, p. 565.)

Between ages of 21 and 25, whole income to be payable.

And direction as to shares of infant married daughters.

6. IN TRUST for all my children in equal shares, except that my daughters —— shall bring into hotchpot and account for as part of their respective shares the sums of £—— and £——, settled by me on their respective marriages, and my son —— shall bring into hotchpot and account for as part of his share the sum of £——, which I expended for his benefit in the year 18—, and except also that every son and daughter of mine shall bring into hotchpot and account for as part of his or her share every sum of money (exceeding £—— at one time) which I may hereafter give or agree to give to or for the benefit of such son or daughter upon his or her marriage, or otherwise for his or her advancement or benefit, unless in any such case I shall by writing direct to the contrary.

Trust for children equally except that past and future advances to children shall be brought into hotchpot.

7. IN TRUST to pay the income thereof to my said wife during her life, and after her decease IN TRUST for my children who being sons [have attained or] shall attain the age of twenty-one years, or being daughters [have attained or] shall attain that age or [shall] marry under that age, to be divided between them in equal shares, and if there shall be only one such child, the whole to be in trust for that one child: PROVIDED ALWAYS, and I declare that my trustees shall retain the share of each of my daughters of and in the residuary trust funds upon the trusts

Trusts for children equally.

Declaration that trustees shall hold share of each daughter in

FOR WIFE AND CHILDREN.

following (that is to say), UPON TRUST to pay the income thereof to my same daughter for life, and so that if and while she shall be under coverture the same shall be for her separate use, and she shall not have power to dispose of the same in the way of anticipation, but with power nevertheless for my same daughter to appoint, by deed or will, that after her decease the whole or any part of such income shall be paid to any husband of her who may survive her during his life or any less period: AND FROM AND AFTER the decease of such daughter, and subject to any appointment which may be made to her husband as aforesaid, IN TRUST for the children of my same daughter or any of them or any of their issue in such shares (if more than one) and in such manner as she shall, by any deed or deeds, or by her will appoint, AND IN DEFAULT of such appointment, and so far as any such appointment shall not extend, IN TRUST for the children of my same daughter, who being male shall attain the age of twenty-one years, or being female shall attain that age or marry, in equal shares, and if there be only one such child, the whole to be in trust for that one child, BUT SO NEVERTHELESS that no child, who or any of whose issue shall take a share under any such appointment as aforesaid, shall take any part of the trust funds remaining unappointed without bringing the share appointed to him or her or to his or her issue into hotchpot and accounting for the same accordingly, unless my daughter making such appointment as aforesaid shall thereby direct the contrary: AND IN CASE there shall be no child of my same daughter who being male shall attain the age of twenty-one years, or being female shall attain that age or marry, then UPON SUCH TRUSTS and in such manner as my same daughter shall by deed or will when not under coverture, or by will while under coverture, appoint, AND IN DEFAULT of such appointment, and so far as any such appointment shall not extend, IN TRUST for my other children, who being sons attain the age of twenty-one years, or being daughters attain that age or marry, in equal shares, and so that the share or shares accruing to each or any daughter of mine under this trust shall be subject to the trusts hereby declared concerning the original share of the same daughter under this my will: PROVIDED ALWAYS, and I hereby declare that if any child of mine shall die in my lifetime leaving a child or children who being male shall attain the age

trust to pay income to her for life for separate use, with power to appoint life interest to husband,

and subject thereto for issue of daughter as she shall appoint;

in default of appointment for children of daughter equally.

Hotchpot clause.

If no issue of daughter, then as daughter shall appoint;

in default of appointment, for testator's other children, daughters' accruing shares to be similarly settled.

Proviso that issue of children dying before testator shall take parent's share.

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of twenty-one years, or being female shall attain that age or marry, then and in every such case the last-mentioned child or children shall take (and if more than one, equally between them) the share to which his, her, or their parent would have been entitled of and in the residuary trust funds if such parent had survived me and attained the age of twenty-one years, including any share or shares which would have accrued to such parent under the trust and provision in that behalf hereinbefore contained: AND I DECLARE that (*c*) my trustees shall have power to raise any part or parts not exceeding together one moiety of the vested or expectant share of any son or grandchild of mine under the trusts of this my will and apply the same for his or her advancement, preferment, or benefit as my trustees shall think fit, but so that no such moneys shall be raised and applied as aforesaid during the existence of any prior interest or interests therein under this my will, without the consent in writing of the person or persons having such prior interest or interests: [PROVIDED ALWAYS, and I hereby declare that it shall be lawful for my trustees, at any time or times in contemplation of the marriage of any daughter of mine, with the consent in writing of such daughter if she shall be of full age, but if not then at the discretion of my trustees, by any deed or deeds to revoke the trusts, powers, and provisions hereinbefore declared and contained concerning the share (as well original as accruing) of such daughter of and in the residuary trust funds or any part thereof, and by the same or any other deed or deeds to resettle the same share, or the part thereof to which such revocation shall extend, upon such trusts, and with and subject to such powers and provisions for the benefit of such daughter and her husband and issue, or any one or more of them, as my trustees shall think fit, with liberty for them either to act themselves as the first trustees of such settlement, or to nominate any other persons or person to act either alone or in conjunction with them or any of them as such trustees, and so also that such settlement may contain such powers as to the investment of the trust funds, and the

Advancement clause.

Power to trustees on marriage of any daughter, with her consent to revoke trusts of her share, and re-settle same.

(*c*) The statutory provision for maintenance will apply to the daughters, although they only take life interests. See Conveyancing Act, 1881, s. 43.

FOR WIFE AND CHILDREN.

varying of such investments, and such other powers and provisions as may be deemed proper and convenient: PROVIDED ALSO that it shall be lawful for my trustees, with the consent of my said wife if she shall be living, and if she shall be dead at the discretion of my trustees, to raise out of the share, the trusts whereof shall be so revoked as aforesaid, any sum of money not exceeding the sum of £——, and to pay the money to be so raised to the daughter so about to marry as aforesaid for her absolute use, or otherwise to apply the same for her benefit as my trustees shall think fit.]

With power to pay a part to daughter absolutely.

Trusts of proceeds.

8. IN TRUST to pay the income thereof to my said wife during her life, and after her decease UPON the trusts following (that is to say), AS TO one moiety thereof, IN TRUST to pay the income of such moiety to my daughter G. H., the wife of I. H., during her life for her separate use, and so that she shall not have power while under coverture to dispose thereof in the way of anticipation, but with power for the said G. H., by any deed or deeds, or by her will to appoint that after her decease the whole or any part of the said income shall be paid to the said I. H., or to any future husband of her who may survive her, during his life, or for any less period: AND AFTER the decease of the said G. H., and subject to any such appointment in favour of her husband as aforesaid, IN TRUST for such child, children, or remoter issue of the said G. H., whether by the said I. H. or by any future husband, in such shares (if more than one) and in such manner as the said G. H. shall by any deed or deeds, or by her will, whether under coverture or not, appoint: AND IN DEFAULT of such appointment, and so far as any such appointment shall not extend, IN TRUST for all the children of the said G. H., who being sons attain the age of twenty-one years, or being daughters attain that age or marry, in equal shares, and if there shall be only one such child the whole to be in trust for that one child, BUT so that no child who or any of whose issue shall take any share under any such appointment as aforesaid shall participate in the unappointed part of the said moiety without bringing the share or shares appointed to him or her or to his or her issue into hotchpot, and accounting for the same accordingly, unless the said G. H. shall by such appointment direct the contrary: AND IF there shall be no child of the said G. H., who being a son shall attain the age of twenty-one years,

As to one moiety, to pay income to one daughter for life.

With power to appoint a life interest to her husband.

Afterwards for issue as same shall appoint.

In default of appointment, for children equally.

Hotchpot clause.

In default of issue, for appointees of same daughter.

FOR WIFE AND CHILDREN.

or being a daughter shall attain that age or marry, then IN TRUST for such person or persons, and in such manner as the said G. H. shall by any deed or deeds, or by her will, whether under coverture or not, appoint: AND IN DEFAULT of such appointment, and so far as any such appointment shall not extend, UPON THE TRUSTS, and with and subject to the powers and provisions hereinafter declared concerning the other moiety of the residuary trust funds, or such of them as shall be then subsisting and capable of taking effect: AND AS TO THE OTHER MOIETY of the residuary trust funds, in trust to pay the income thereof to my said daughter, K. M., &c. (*Trusts in favour of K. M., her husband and issue, and her appointees, similar to those declared of the first moiety, mutatis mutandis*): AND IN DEFAULT of such appointment, and so far as any such appointment shall not extend, UPON THE TRUSTS, and with and subject to the powers and provisions hereinbefore declared and contained concerning the first-mentioned moiety of the said residuary trust funds, or such of them as shall be then subsisting, and capable of taking effect: AND I DECLARE that my trustees may at any time or times raise any part or parts not exceeding together one moiety of the vested or presumptive share of any grandchild of mine under the trusts of this my will, and apply the same for his or her preferment, advancement, or benefit, as my trustees shall think fit, but so that no moneys shall be raised under this power during the continuance of any prior interest or interests in the same moneys under this my will, without the consent in writing of the person or persons having such prior interest or interests.

In default of appointment, upon same trusts as other moiety.

As to other moiety, upon similar trusts for other daughter and her issue.

Advancement clause.

9. IN TRUST to pay the income thereof to my said wife during her life, and after her decease IN TRUST that my trustees shall appropriate a sum of £—— for each of my daughters (*naming them*), to be held upon the trusts hereinafter declared concerning the same, and shall stand possessed of the surplus of the said residuary moneys, IN TRUST for my only son (*naming him*), absolutely: AND I DECLARE that my trustees shall stand possessed of each of the said several sums of £—— hereinbefore directed to be appropriated for my said daughters respectively, UPON TRUST that my trustees shall invest the same, with liberty to vary the investments thereof from time to time, and shall stand possessed of the same sum of £—— and the investments thereof, UPON the trusts following (that is to say), IN TRUST to pay the

Trust to appropriate legacy for each of testator's daughters.

Surplus to be in trust for only son.

Trustees to hold each appropriated legacy in trust to invest same and pay income to daughter for separate use with power to appoint life interest to husband,

FOR WIFE AND CHILDREN.

income thereof to the daughter for whom the same shall have been appropriated as aforesaid during her life, and so that if and while she shall be under coverture, the same shall be for her separate use, without any power for her to dispose thereof in the way of anticipation, but with power for her to appoint by deed or will that the whole or any part of the said income shall be paid to any husband of her who may survive her during his life, or for any less period: AND FROM AND AFTER her decease, and subject to any appointment which may be made to any husband of her as aforesaid, IN TRUST for such child, children, or remoter issue of my same daughter in such shares (if more than one) and in such manner as she shall by deed or will appoint: AND IN DEFAULT of such appointment, and so far as any such appointment shall not extend, IN TRUST for all the children of my same daughter, who being sons attain the age of twenty-one years, or being daughters attain that age or marry, in equal shares, and if there shall be only one such child, the whole to be in trust for that one child, BUT so that no child who or any of whose issue shall take any share under such appointment shall take any share of the unappointed part of the said legacy without bringing the share or shares appointed to him or her, or to his or her issue, into hotchpot, and accounting for the same accordingly, unless the daughter making such appointment shall thereby direct the contrary: AND IN CASE there shall be no issue of my same daughter in whom the same sum of £——, or the investments representing the same, shall become absolutely vested under the trusts aforesaid, then and in such case, and subject to the said trusts, the same sum of £—— or the investments representing the same shall sink into and form part of my residuary estate. (*Advancement clause, supra*, p. 565.)

and subject thereto in trust for her issue as she shall appoint.

In default of appointment, for her children equally.

Hotchpot clause.

In default of issue, to fall into residue.

Trusts for wife during widowhood, afterwards for children attaining twenty-one, &c.

10. IN TRUST to pay the income thereof to my said wife during her life if she shall so long continue my widow, and from and after her decease or second marriage (which shall first happen), IN TRUST for all my children who being sons [have attained or] shall attain the age of twenty-one years, or being daughters [have attained or] shall attain that age or [shall] marry under that age, but subject as to the share of my son D. B. to the trusts hereinafter declared concerning the same (*Proviso that issue of children dying before testator shall take parent's share, supra*, p. 564): PROVIDED ALWAYS, and I declare that if my son D. B. shall survive

Proviso that share of one of the sons shall be retained by the trustees.

FOR WIFE AND CHILDREN.

me my trustees shall retain his share of and in the residuary trust funds, and hold the same upon the trusts following (that is to say): In trust to invest or continue the investments thereof with power to vary such investments, and to pay the income of the said share and the investments representing the same unto the said D. B. until he shall assign, charge, or otherwise dispose of the said income or some part thereof, or become bankrupt or do or suffer something whereby the said income, if belonging absolutely to him, or some part thereof, would become payable to or vested in some other person (which of the said events shall first happen): And if the trust hereinbefore declared shall determine in the lifetime of the said D. B., then In trust during the remainder of the life of the said D. B. to pay and apply the income thereof for the maintenance and support or otherwise for the benefit of all or such one or more exclusively of the other or others of the said D. B. and his wife and issue for the time being (if any), or if he shall for the time being have no wife or issue living, then for the benefit of all or such one or more exclusively of the others or other of the said D. B. and his brothers and sisters, nephews and nieces for the time being, in such manner in all respects as my trustees shall in their uncontrolled discretion think fit, And from and after the decease of the said D. B., then In trust for all his children who being sons shall attain the age of twenty-one years, or being daughters shall attain that age or marry, in equal shares, and if there shall be but one such child the whole to be in trust for that one child: And if there shall be no child of the said D. B. who being a son shall attain the age of twenty-one years, or being a daughter shall attain that age or marry, then In trust for my other children who being sons shall attain the age of twenty-one years, or being daughters shall attain that age or marry, in equal shares: Provided always, that the said D. B. may by deed or will appoint that the whole or any part of the income of the said share shall, after his death, be paid to his widow (if any) during her life, or for any less period: Provided also, that notwithstanding the foregoing trusts, my trustees may at any time or times, if they shall in their uncontrolled discretion think fit so to do, transfer or pay the whole or any part of the capital of the share of the said D. B., or the trust funds representing the same, unto the said D. B., for his absolute use, or otherwise apply the

In trust to pay the income to the son during his life or until bankruptcy or alienation,

and in the event of cesser of life interest,

in trust during rest of his life, to apply income for the maintenance of him and his wife and children, or some of them, at discretion of trustees,

afterwards for children.

Power to give life interest to widow.

Power to trustees to raise the whole or any part of legacy and pay it to son absolutely, or (with his consent) to alter trusts.

FOR WIFE AND CHILDREN.

same for his benefit, or they may, with the consent of the said D. B., revoke by deed all or any of the trusts hereinbefore declared, and declare any new or other trusts of or concerning the said share or any part thereof. (*Power of advancement, supra*, p. 565.)

IN WITNESS, &c.

No. V.

OF ALL TO WIFE AND CHILDREN.

WILL *giving all the testator's property to his* WIFE *for life and then to his* CHILDREN (*a very short form* (*a*)).

Appointment of executors, trustees, and guardians.

THIS IS THE LAST WILL of me, A. B. of, &c. I appoint C. D. of, &c., and E. F. of, &c. (hereinafter called "my trustees"), to be the executors and trustees of this my will; and I appoint my wife during her life, and after her death my trustees, to be the guardian and guardians of my infant children:

Gift of all the property to trustees to convert, and pay the income to wife, and after her death divide corpus among children.

I GIVE all my property unto my trustees, IN TRUST to convert into money the same, and to invest the proceeds, with power to vary the investments thereof: AND to pay the income thereof to my wife during her life, and after her death to divide the corpus equally among all my children who being sons attain the age of twenty-one years, or being daughters attain that age or marry, with power for my trustees, with the consent of my said wife if living, and if not at their own discretion, to raise the whole or any part of the presumptive share of any infant child, and to apply the same for his or her advancement or benefit:

Power to postpone conversion.

AND I empower my trustees to postpone the conversion of any part of my property for so long as they shall think fit, and the income or any property remaining unconverted shall from the time of my death be paid and applied in the same manner as the income of the proceeds thereof would have been payable and applicable for the time being if the same had been converted.

IN WITNESS, &c.

(*a*) Sometimes a solicitor is called on to make a will for a person *in extremis*, when there is not time for the more elaborate trusts and provisions contained in Precedent No. II. In such a case the above precedent may be used.

No. VI.

WILL *of a* WIDOWER *giving all his* PROPERTY *in* TRUST *for his* CHILDREN *who are all* ADULTS. — FOR ADULT CHILDREN.

THIS IS THE LAST WILL of me, A. B. of, &c. I appoint my sons, C. D. of, &c., and E. F. of, &c., to be the executors and trustees of this my will, and I give to them all my property IN TRUST to convert the same into money by sale or otherwise, and to divide the proceeds (after paying thereout my funeral and testamentary expenses and debts) among all my children in equal shares. — Appointment of executors. — Gift of all the property to the executors in trust to convert and divide among children.

IN WITNESS, &c.

No. VII.

WILL *of a* WIDOWER, *giving all his* PROPERTY *in* TRUST *for his* CHILDREN *equally*, SOME *of whom are* UNDER AGE. (*A very short form.*) — FOR CHILDREN, SOME BEING INFANTS.

THIS IS THE LAST WILL of me, A. B. of, &c. I appoint C. D. of, &c. and E. F. of, &c. (hereinafter called "my trustees") to be the executors and trustees of this my will and the guardians of my infant children: I GIVE, &c. (*legacies*): AND I give all my property not hereby otherwise disposed of unto my trustees, IN TRUST to convert the same into money by sale or otherwise, and to divide the proceeds (after paying my funeral and testamentary expenses and debts and the legacies hereby bequeathed) among all my children, who being sons attain the age of twenty-one years, or being daughters attain that age or marry, in equal shares, with power for my trustees to invest the expectant shares of infant children, and to raise any part not exceeding one moiety of any such share, and apply the same for the advancement or benefit of the infant — Appointment of executors, trustees, and guardians. — Legacies. — Gift of residuary property to trustees in trust to convert and divide proceeds among children equally. — Expectant shares of infant children to be invested. — Power of advancement.

FOR CHILDREN, SOME BEING INFANTS.

presumptively entitled thereto: And I also empower my trustees to postpone the sale and conversion of any part of my estate for so long as they shall think fit, and the income of unconverted property shall from the time of my death go in the same manner as the income of the proceeds thereof would have been applicable if the same had been converted.

Power to postpone conversion.

In witness, &c.

No. VIII.

OF FREEHOLD AND COPYHOLD AND PERSONAL ESTATE FOR BENEFIT OF CHILDREN.

WILL *of a* Widower; Devise *and* Bequest *of* Real *and* Personal estate (*except copyholds*) *to trustees in trust to sell and convert;* Devise *of* Copyholds *to such* Uses *as trustees shall* Appoint *in exercise of trust for* Sale; Trusts *of* Proceeds *of sale and conversion, to pay* Funeral *and* Testamentary *expenses,* Debts, *and* Legacies, *and divide surplus between* Children *equally,* Except *that the share of* Eldest Son *who has received an advance shall be reduced by the amount of such advance;* Married Daughter's *share to be charged with sum covenanted to be paid by marriage settlement; Share of* Infants *to be invested for their benefit;* Power *to sons to* Purchase *real estate at a* Valuation; Power *to* Allot *specific portions of property to any* Child *or* Grandchild; *Usual Powers and Provisions.*

I, A. B. of, &c., hereby revoke all former wills and testamentary dispositions, and declare this to be my last will and testament, &c.: I appoint (*Appointment of executors, trustees, and guardians, supra,* p. 563). And whereas I have five children by my late wife C. B. deceased, viz., G. B., H. S., the wife of R. S. of, &c., I. B., K. B., and L. B., of whom the said G. B. and H. S. have attained the age of twenty-one years, and my other children are under that age; And whereas I lately paid the sum of £800 in the purchase of a commission in the Army

Recital that testator has five children.

That testator had paid money for benefit of eldest son.

for the said G. B.; AND WHEREAS, by the settlement made on the marriage of my said daughter H. S. with the said R. S., which settlement is dated the —— day of ——, I covenanted with —— (*names*), the trustees named in the said settlement, for the payment to them by my executors or administrators, within twelve calendar months after my decease, of the sum of £2,000, with interest for the same after the rate of £4 per cent. per annum, computed from my decease, to be held by the said trustees upon the trusts therein declared for the benefit of my said daughter and her husband and issue; NOW I HEREBY GIVE AND DEVISE such part of my messuage, farm, and lands, situate at ——, as is of freehold tenure, and all other (if any) my real estate (except copyhold hereditaments), and all my moneys, securities for money, and other personal estate and effects whatsoever, unto my trustees: AND I GIVE AND DEVISE such part of the said messuage, farm, and lands as is of copyhold tenure, and all other (if any) my copyhold lands and tenements, TO THE USE of such person or persons and in such manner (*a*) as my trustees shall within twenty-one years after my decease, by any deed or deeds, for the purpose of carrying into effect any sale made under the trusts hereinafter in that behalf declared, appoint: AND IN DEFAULT of and until such appointment I give and devise the same unto and to the use of the said C. D. in trust for my trustees, and to be surrendered and disposed of as my trustees shall direct: AND I DECLARE that my trustees shall sell, call in, and convert into money the said real and personal estate (including the said copyhold hereditaments) hereinbefore devised and bequeathed, or such part thereof as shall not consist of money, and shall with and out of the moneys to arise from such sale, calling in, and conversion, and with and out of the

OF FREEHOLD AND COPYHOLD AND PERSONAL ESTATE FOR BENEFIT OF CHILDREN.

That on daughter's marriage he had covenanted to pay a certain sum to trustees on his decease.

Devise of real and personal estate (except copyholds) to trustees.

Devise of copyholds to such uses as trustees shall appoint, and in default of appointment to use of trustees.

Declaration that trustees shall, out of proceeds of sale and conversion, pay debts, and hold residue in trust for children, so that eldest

(*a*) Where part of the testator's property is copyhold, and he intends that it shall be sold after his death, the proper course is to give to the trustees a power of appointment over it. Under such a power the trustees may on a sale appoint the property to the purchaser, who will be entitled to require admittance without the intermediate admittance of the trustees, and thus a single instead of a double fine is payable. If, however, an immediate sale is not contemplated, there is no advantage in the plan, because the lord of the manor will be entitled at any time before a sale to require some one to be admitted, and in default of such admittance to seize the land *quousque* for want of a tenant. As the fine payable on the admission of joint tenants exceeds that payable on the admission of a single tenant, the limitation in default of appointment is in the text to one of the trustees in trust for all of them.

Proper form of devise of copyholds when a sale by trustees is intended.

OF FREEHOLD AND COPYHOLD AND PERSONAL ESTATE FOR BENEFIT OF CHILDREN.

moneys of which I shall be possessed at my death, pay my funeral and testamentary expenses and debts (other than the said sum of £2,000 covenanted to be paid in and by the said marriage settlement of my said daughter H. S.), and shall stand possessed of the residue of the said moneys (hereinafter called "the residuary trust funds"), IN TRUST for all my children as tenants in common, to be divided between them in such manner that the share of my said son G. B. shall be less in amount than the share of each of my other children by the sum of £800, and that the shares of my other children shall be equal:

son's shall be less by amount advanced to him than the share of the others.

Proviso that daughter's share shall be exclusively charged with sum covenanted to be paid to her trustees.

PROVIDED ALWAYS, and I declare (*b*), that the share of my daughter H. S. shall be charged with the payment to the trustees of her marriage settlement of the said sum of £2,000 thereby covenanted to be paid by my executors or administrators as aforesaid, and with the interest of the same, in exoneration of the residue of my estate and effects:

Accruer clause.

PROVIDED ALWAYS, and I declare that if any child of mine living at my decease being a son shall die under the age of twenty-one years, and without leaving issue, or being a daughter shall die under that age and without having been married, as well the original share of every or any child so dying, as also any share or shares accruing to him or her under this provision, shall go to the others of my children in equal shares:

Proviso that issue of children dying before testator shall take their parent's share.

PROVIDED ALSO, and I further declare that if any child of mine shall die in my lifetime, leaving a child or children who shall survive me, and being a son or sons shall attain the age of twenty-one years, or being a daughter or daughters shall attain that age or marry under that age, then and in every such case the last-mentioned child or children shall take (and if more than one, equally between them) the share (as well original as accruing) which his, her, or their parent would have taken under this my will if such parent had survived me and attained the age of twenty-one years:

Declaration that shares of infants shall be invested.

PROVIDED ALWAYS, and I declare that if any child or grandchild of mine entitled in expectancy to a share of the residuary trust funds under this my will shall at my death be under the age of twenty-one years, my trustees shall invest the expectant share of each such

(*b*) It is assumed that the settlement contains a provision for settling H. S.'s after-acquired property, so that the share she takes under the will will become subject to such settlement.

minor with power to vary the investments thereof from time to time, and the income thereof shall be applicable for his or her maintenance under the statutory provision in that behalf (*c*); AND I ALSO DECLARE that my trustees may at any time or times raise any part or parts not exceeding together one moiety of the expectant share of any minor under the trusts of this my will, and apply the same for his or her preferment, advancement, or benefit, in such manner as my trustees shall think fit (*Power to postpone sale and conversion, supra*, p. 565): PROVIDED ALWAYS, and I declare that if either of my sons having attained the age of twenty-one years shall within twelve calendar months after my death, by a notice in writing, to be given to my trustees or any one of them, offer to purchase the hereditaments hereby devised and bequeathed in trust for sale or any part thereof, then and in such case the same hereditaments shall be sold to the son making such offer at a price to be agreed on between my trustees and my said son, or if they are unable to agree, then at a price to be determined by the valuation of two indifferent persons, one to be chosen by each party or by an umpire to be chosen by the two valuers before they proceed to act in the valuation: AND I FURTHER DECLARE that if two or more of my said sons shall offer to purchase the same hereditaments under the option hereinbefore given to my said sons in that behalf, the preference shall be given to the eldest of the sons making such offer: PROVIDED ALWAYS, that no purchaser of any hereditaments under the trust for sale hereinbefore declared, shall be bound or concerned to see or inquire whether any of my sons shall have made such offer to purchase as aforesaid, nor be affected by notice that such offer has been made: PROVIDED ALWAYS, and I further declare that it shall be lawful for my trustees from time to time to arrange with any one or more of my children or grandchildren entitled to a share or shares in the residuary trust funds, that as regards any specific part of my property for the time being remaining unsold or not consisting of money, the same instead of being sold and converted into money shall be taken by such child or children, or grandchild or grandchildren, in satisfaction or part satisfaction of his or her

OF FREEHOLD AND COPYHOLD AND PERSONAL ESTATE FOR BENEFIT OF CHILDREN.

Power of advancement.

Power to sons to purchase real estate at a valuation.

Power to trustees to allot specific portion of property to any child or grandchild.

(*c*) See Conveyancing Act, 1881, s. 43.

OF FREEHOLD AND COPYHOLD AND PERSONAL ESTATE FOR BENEFIT OF CHILDREN.

or their share or respective shares in the residuary trust funds, and for this purpose the property to be so taken shall be deemed to be of such value as shall be agreed on between my trustees and the person or persons taking the same. (*Investment clause, supra*, p. 566.)

In witness, &c.

No. IX.

OF ANNUITY TO WIFE, LEGACIES TO YOUNGER CHILDREN, AND RESIDUE TO ELDEST SON.

WILL *of* Real *and* Personal *estate;* Bequest *of* Annuity *to* Wife, *and* Legacies *to all the* Children *except the* Eldest Son; Residue *to the* Eldest Son.

I, A. B. of, &c. (*Commencement and appointment of executors, trustees, and guardians, supra*, p. 563; *Bequest of furniture, &c., and a legacy to wife*): I give to my said wife an annuity of £—— during her life, to be paid to her by equal half-yearly payments, the first of such payments to be made at the expiration of six calendar months after my decease: I give to each of my children (other than my eldest son ——), who being a son attains the age of twenty-one years, or being a daughter attains that age or marries, the sum of £5,000, free from legacy duty: And if any child (other than my eldest son) shall die in my lifetime leaving issue, then and in every such case I give the legacy of £5,000, which each or any such child would have taken under this my will if he or she had survived me and attained the age of twenty-one years, to his or her children (if any) who being a son or sons shall attain the age of twenty-one years, or being a daughter or daughters shall attain that age or marry, and if there shall be only one such child, the whole to go to that one child: And I declare that if at my decease any child or grandchild of mine, presumptively entitled to a legacy or a share of a legacy under the aforesaid bequests, shall be under the age of twenty-

Bequest of annuity to wife for life.

Bequest of a legacy to each younger son attaining twenty-one and to each daughter attaining that age, or marrying.

Legacies of children dying before testator to go to their issue (if any).

Legacies of infants to be retained, and invested, and income applicable for maintenance.

OF ANNUITY TO WIFE, LEGACIES TO YOUNGER CHILDREN, AND RESIDUE TO ELDEST SON.

one years, and being a female shall be also unmarried, then and in every such case the presumptive legacy or share of such infant shall be retained and invested by my trustees, and shall be deemed to be property held in trust for that infant within the meaning of section 43 of the Conveyancing and Law of Property Act, 1881, and the income thereof shall be applied accordingly: And I also declare that my trustees may, if they think fit, raise any part not exceeding a moiety of the same presumptive legacy or share, and apply the same for the preferment, advancement, or benefit of such infant, at their discretion: And I declare that if any of the legacies hereinbefore bequeathed shall fail to become absolutely vested in any person or persons under this my will, every such legacy and the accumulations thereof, and the investments representing the same, or such part thereof as shall not have been applied for the advancement of any infant presumptively entitled thereto as aforesaid, shall fall into and form part of my residuary estate. (*Devise and bequest of residuary real and personal estate to trustees in trust to sell and convert, and pay funeral and testamentary expenses, debts, and legacies, supra*, p. 564); And shall also appropriate and invest in Consolidated Stock such a sum of money as will, when invested, be sufficient with the income thereof to pay and satisfy the said annuity of £—— hereinbefore given to my said wife, and shall retain the same as a fund to answer the said annuity, and shall stand possessed of the residue of the said moneys, and also of the fund set apart to answer the said annuity subject to the same annuity (hereinafter called the said residuary moneys), In trust for my eldest son G. B.: Provided always, that if the said G. B. shall die in my lifetime, or shall survive me and die under the age of twenty-one years, then and in such case my trustees shall stand possessed of the said residuary moneys, In trust for the child or children (if any) of my said son G. B., who being male shall attain the age of twenty-one years, or being female shall attain that age or marry, and if there shall be no such child as last aforesaid, then In trust for such son of mine (other than the said G. B.) as shall first attain the age of twenty-one years: And I declare that if the said G. B., or other the person entitled in expectancy to the said residuary moneys or any part thereof under this my

Advancement clause.

Legacies which fail to vest to sink into residue.

Devise and bequest of residue.

Trusts of proceeds, to appropriate in Consolidated Stock a fund to answer annuity.

Residue to eldest son.

But if he dies under age, then for his children attaining twenty-one, &c., and if no child, then for such son of testator as shall first attain twenty-one.

Direction to invest residue during infancy.

OF ANNUITY TO WIFE, LEGACIES TO YOUNGER CHILDREN, AND RESIDUE TO ELDEST SON.

Advancement clause.

will, shall be under the age of twenty-one years at my decease, my trustees shall invest the same, with liberty from time to time to vary the investments thereof: And my trustees may at any time or times during the minority of the said G. B., or any other person for the time being entitled in expectancy to the said residuary moneys or any part thereof under this my will, raise out of the same moneys any sum or sums not exceeding together the sum of £——, and may apply the same for the advancement, preferment, or benefit of such infant as my trustees shall think fit. (*Power to postpone sale and conversion, supra*, p. 565.)

In witness, &c.

No. X.

DEVISE OF HOUSE AND LAND TO INFANT SON, AND DEVISE AND BEQUEST OF RESIDUE IN TRUST FOR WIFE AND CHILDREN.

WILL *of* Real *and* Personal Estate; Devise *of House and Lands to* Trustees *in Trust to* Manage *and* Apply Rents *and* Profits *for Benefit of* Son *During his* Minority, *and to* Convey *same to him on his attaining Twenty-one; In case of decease of* Son *during Minority, the Property to fall into Residue;* Devise *and* Bequest *of* Residue of *Real and Personal Estate upon Trust for* Sale *and* Conversion, *and to pay income to* Wife *for life; and after death of Wife for* Children; *Usual powers and provisions.*

Devise of lands to son, on his attaining twenty-one.

I, A. B. of, &c. (*Commencement of will and appointment of executors, trustees, and guardians, supra*, p. 568): I give and devise my messuage or dwelling-house in which I am now residing, called ——, together with the pleasure grounds, lands, gardens, outbuildings, and appurtenances thereunto belonging, or therewith usually held or enjoyed, and also all that piece and parcel of land, situate and being ——, which I lately purchased ——, and which is now in the tenure or occupation of ——,

DEVISE OF HOUSE AND LAND TO INFANT SON, AND DEVISE AND BEQUEST OF RESIDUE IN TRUST FOR WIFE AND CHILDREN.

his under-tenants or assigns, unto my trustees, IN TRUST that if my son F. B. shall be under the age of twenty-one years at my decease, my trustees shall enter into, and during the minority of the said F. B. remain in the possession or receipt of the rents and profits of the said messuage and premises, and manage the same with power to let the same for any term of years not exceeding seven years in possession, and shall apply the whole or such part as they shall think fit of the said rents and profits, for or towards the maintenance and education of the said F. B., and shall invest the surplus (if any) of the said rents and profits, and all the resulting income thereof, so as to accumulate at compound interest, with power to resort to the accumulations of any preceding year or years, and to apply the same for the maintenance and education of my said son: AND upon further trust that if and when the said F. B. shall attain the age of twenty-one years my trustees shall convey the said messuage and premises to him in fee simple, and shall transfer to him the said accumulations, or so much thereof as shall not have been applied as aforesaid. But if the said F. B. shall die under the age of twenty-one years, then my trustees shall stand seised and possessed of the said messuage and premises and accumulations upon the trusts hereinafter declared concerning my residuary real and personal estate. I GIVE, DEVISE, AND BEQUEATH all my real and personal estate not hereby otherwise disposed of, unto my trustees, &c. (*Devise and bequest of real and personal estate, upon trust for sale and conversion into money, and for investment and varying securities, and to pay income to wife for life, and after her decease for testator's children; usual clauses, supra*, pp. 564 to 567.)

Power to trustees to apply rents and profits of estate during minority of son for his benefit.

Devise and bequest of residue of real and personal estate.

IN WITNESS, &c.

No. XI.

OF REAL ESTATE TO ELDEST SON SUBJECT TO CHARGES.

WILL *giving* REAL ESTATE *to* ELDEST SON *charged with* ANNUITY *to* WIFE *and* LEGACIES *to* YOUNGER CHILDREN *secured by a* TERM *vested in* TRUSTEES.

Devise of freehold and copyhold property to trustees for term and subject thereto to eldest son in fee.

I, A. B. of, &c. (*Commencement of will and appointment of executors, trustees, and guardians, supra*, p. 563): I GIVE all my messuages, lands, and hereditaments being of freehold tenure to the use of my trustees for the term of one thousand years, And from and after the determination of the said term, and in the meantime subject thereto, and to the trusts thereof, To the use of my eldest son C. B., in fee simple (*a*): AND I declare that the said premises are hereinbefore devised to the use of my trustees during the said term of one thousand years, Upon the trusts following (that is to say): UPON TRUST that if my personal estate hereinafter bequeathed shall be insufficient for the payment of my funeral and testamentary expenses and debts, and the legacies given by this my will, or any codicil hereto, and payable out of my personal estate, then and in such case my trustees shall by mortgage or sale of the said premises for all or any part of the said term or by or out of the rents and profits thereof or by any other reasonable ways or means raise the money required to make up the deficiency, and apply the money to be so raised accordingly: AND UPON FURTHER TRUST that my trustees shall by some or one of the ways or means aforesaid raise and pay to my said wife during her life an annuity of £—— during her life by equal half-yearly payments, the first payment to be made at the end of six calendar months after my death: AND UPON FURTHER TRUST that my trustees shall by some or one of the ways or means aforesaid raise the sum of £—— for each child of mine (other than the said C. B.) who being a son attains the age of twenty-one years, or being a daughter attains that age or marries under that age, and shall also raise and pay to each child who has attained a vested interest in the sum of £—— hereinbefore provided for him or her interest

Trusts of term,

to raise money to pay debts and legacies in and of personal estate,

to pay annuity to wife for life,

to raise portions for younger children,

(*a*) It is assumed that C. B. is of age.

thereon after the rate of £4 per cent. per annum so long as the principal sum shall remain unpaid, and so that the receipt of any daughter who shall marry while an infant shall be a sufficient discharge for such interest notwithstanding her infancy: AND UPON FURTHER TRUST that if at my decease any son of mine other than the said C. B. shall be under the age of twenty-one years or any daughter of mine shall be under that age and unmarried, my trustees shall by some one of the ways or means aforesaid raise such annual sum as my trustees shall think fit, not exceeding in any year for any one such minor the sum of £——, and apply the same for his or her maintenance or education in such manner as they my trustees shall think fit, with liberty for them to pay the same to the guardian or guardians of such minor for the purpose aforesaid, without being liable to see to the application thereof: And I declare that subject to the foregoing trusts my trustees shall permit the rents and profits of the said premises comprised in the said term to be received by the said C. B., his heirs and assigns. I GIVE all my copyhold and leasehold lands, tenements and hereditaments unto my trustees, UPON the same trusts as are hereinbefore declared concerning the said term of one thousand years limited in the said freehold hereditaments, but so as not to increase or multiply charges: AND subject thereto, IN TRUST for the said C. B., absolutely: PROVIDED ALWAYS and I declare that it shall be lawful for my trustees at all times during the continuance of the trusts of the said term of one thousand years to concur with the said C. B., his heirs or assigns, in the sale in any manner my trustees shall think fit, of the freehold, leasehold, and copyhold premises hereinbefore devised and bequeathed, or any part thereof, and in assuring the same to the purchaser or purchasers freed and discharged from the trusts of the said term: BUT in case of any such sale the proceeds shall be either applied in the payment of incumbrances affecting the said premises, or some part thereof, or the same shall be received by my trustees, and at the option of the said C. B. his heirs or assigns, and at his or their request in writing, be either laid out in the purchase of other hereditaments to be settled to the like uses as are hereinbefore declared concerning the said premises hereinbefore devised and bequeathed or invested in the names of my trustees in or upon any stocks, funds, shares or securities which my trustees shall approve to be held by them

OF REAL ESTATE TO ELDEST SON SUBJECT TO CHARGES.

to raise annual sums for maintenance of younger children during minority.

Devise of copyholds and leaseholds to trustees upon corresponding trusts.

Power to trustees to concur with ultimate devisee in sales.

Application of sale money.

OF REAL ESTATE TO ELDEST SON SUBJECT TO CHARGES.

upon such trusts as shall correspond as nearly as may be with the uses and trusts hereinbefore declared concerning the said premises, but with power at the like request in writing to vary the said investments or to convert the same into money and lay out the produce in the purchase of other hereditaments to be settled as aforesaid: (*Bequest of legacies*) And I give all the residue of my personal estate to my said wife absolutely.

In witness, &c.

No. XII.

OF SETTLED FUNDS AND OTHER PROPERTY AMONG CHILDREN BY TWO MARRIAGES.

WILL *of a* Married Man *who has married twice.* Appointment *of the* Funds *settled on his* First Marriage *among his* Children *by* that Marriage *and gift of all the* Residue *of his* own Property *among his* Children *by* both Marriages, Children *of* Second Marriage *to take an* Additional Share *so as to place them on an* Equality *with the children of the First Marriage.*

Recital that testator has children by two marriages.

I, A. B. of, &c. (*Commencement of will—Appointment of executors and trustees—Bequests of legacies*): And whereas I have issue several children by my first wife ——, deceased, and also several children by my present wife ——: And whereas by an indenture of settlement made on my marriage with my first wife, dated —— day of ——, 18—, I have power to appoint by will the trust funds settled by the said indenture among my children by my said first wife: Now in exercise of the said power I hereby appoint all the moneys, stocks, funds and securities which at my decease shall be held upon or subject to the trusts of the said indenture (which moneys, stocks, funds and securities are hereinafter referred to as "the trust funds settled on my first marriage"), unto and among all my children by my said first wife who being sons [have attained or] shall attain the age of twenty-one years, or being daughters [have attained or] shall attain that age or [shall] marry under that age, in equal shares: And I give, devise and bequeath all my real and personal estate,

Settlement on first marriage, giving him power of appointment.

Appointment of settled funds to children of first marriage equally.

Devise and bequest of

&c. (*Devise of real and personal estate to trustees In trust to sell and convert and invest proceeds and pay income to wife for her life or widowhood*): And after the decease or second marriage of my said wife (which shall first happen) In trust that my trustees shall out of the residuary trust funds raise and pay to each and every child of mine by my present wife who being a son [has attained or] shall attain the age of twenty-one years or being a daughter [has attained or] shall attain that age or shall marry under that age, a sum of money equal in amount or value to the part or share of the trust funds settled on my first marriage, to which each child of mine by my first marriage shall become entitled under the appointment hereinbefore contained, and shall divide the surplus of the residuary trust funds among all my children as well by my first wife as by my present wife who being sons [have attained or] shall attain the age of twenty-one years, or being daughters [have attained or] shall attain that age or [shall] marry under that age, in equal shares (*Advancement and other clauses, supra*, pp. 565 to 567).

OF SETTLED FUNDS AND OTHER PROPERTY AMONG CHILDREN BY TWO MARRIAGES.

testator's own property upon trust for sale and conversion, and for wife during widowhood, and then to raise for each child of second marriage a sum equal to share of each child of first marriage in settled fund, and to divide residue among children of both marriages.

In witness, &c.

No. XIII.

Will *of a* Bachelor; Direction *to* Appropriate *a* Legacy *for* each *of his* Sisters *to be* settled *upon her and her* Issue, *with* power *to* appoint *a* Life Interest *to a* Husband; Residue *to Testator's* Brother *absolutely.*

BEQUEST OF LEGACIES TO SISTERS TO BE SETTLED; RESIDUE TO BROTHER.

I, A. B. of, &c. (*Commencement, and appointment of executors and trustees, supra*, p. 563): I give, &c. (*Bequest of legacies*): I give, &c. (*Devise and bequest of residue of real and personal estate to trustees, in trust to sell and convert, and out of proceeds to pay funeral and testamentary expenses, debts, and legacies, supra*, p. 564): And shall, with and out of the residue of the said moneys, appropriate and set apart a sum of £5,000 for each of my five sisters (*naming them*), to be held upon the trusts hereinafter

Devise and bequest of residue.

Trust to appropriate legacy for each of testator's sisters.

BEQUEST OF LEGACIES TO SISTERS TO BE SETTLED; RESIDUE TO BROTHER.

declared concerning the same, and shall stand possessed of the surplus of the said residuary moneys, IN TRUST for my brother (*naming him*), absolutely: AND I DECLARE that my trustees shall stand possessed of each of the said several sums of £5,000 hereinbefore directed to be appropriated for my said five sisters respectively, UPON TRUST, &c. (*trusts of each legacy for sister and her children with power to give a life interest to husband. See Precedent No. IV. sect.* 9, *substituting* "sister" *for* "daughter" *throughout*).

Surplus to be in trust for brother.

IN WITNESS, &c.

No. XIV.

INCLUDING REAL ESTATE IN SCOTLAND AND AUSTRALIA.

WILL *of* REAL *and* PERSONAL ESTATE, *including* REAL ESTATE *in* SCOTLAND (*a*), AUSTRALIA, *and* NEW ZEALAND (*b*), UPON TRUSTS *for* SALE *and* CONVERSION.

I, A. B. of, &c. (*Commencement of will and appointment of executors and trustees, supra*, p. 563). I DEVISE, CONVEY, AND BEQUEATH, all the real and personal estate in England, Scotland, Australia, New Zealand, or elsewhere, of or to which I am now or at my death shall be seised, possessed, or entitled, or over which I now have or at my death shall have any power of disposition (except what is otherwise disposed of by this my will) unto my trustees, IN TRUST, &c. (*Trusts for sale and conversion, and trusts of proceeds as in Precedent No. II., supra*, p. 564). AND I DECLARE (*c*), that if at the decease of my said wife any child or grandchild of mine entitled in expectancy to a share under this my will shall be under the age of twenty-one years, and being a female shall be unmarried, then and in every such case my trustees may

General devise of real estate in England, Scotland, Australia, or elsewhere, to trustees, if in trust for sale and conversion.

Maintenance clause.

(*a*) See p. 476, *supra*.

(*b*) The English Wills Act has been adopted in Australia and New Zealand and most (if not all) of the other British colonies.

(*c*) The maintenance clause is inserted, because the Conveyancing Act would not apply to the property out of England, except so far as it may have been adopted by the provincial legislatures.

INCLUDING REAL ESTATE IN SCOTLAND AND AUSTRALIA.

apply the whole or any part of the income of the expectant share of such minor for or towards his or her maintenance and education, with liberty to pay the same to the guardian or any of the guardians of such infant for the purpose aforesaid, without being liable to see to the application thereof, and shall invest the residue (if any) of the said income and the resulting income thereof so as to accumulate at compound interest, to the intent that such accumulations shall be added to the principal share from which the same shall have arisen and follow the destination thereof, but my trustees may at any time resort to the accumulations of any preceding year or years and apply the same for or towards the maintenance or education of any person for the time being presumptively entitled thereto: AND I ALSO DECLARE that my trustees may with the consent in writing of my said wife during her life and after her decease at the discretion of my trustees raise any part or parts not exceeding together one moiety of the expectant share of any child or grandchild of mine under this my will and apply the same for his or her advancement, preferment, or benefit as my trustees with such consent or at such discretion as aforesaid shall think fit. AND I DECLARE that my trustees may postpone the sale and conversion of my real and personal property, or any part thereof, and in particular may continue any investments whether the same are of a nature authorized by this my will or not for so long as they shall think fit, without being answerable for any loss arising thereby, and the rents, profits, and income to accrue from and after my death from such part of my property as shall for the time being remain unsold and outstanding shall, after payment thereout of all such expenses and outgoings as in the opinion of my trustees ought to be paid out of income, be paid and applied to the person or persons, and in the manner to whom and in which the income of the moneys produced by such sale and conversion would for the time being be payable or applicable under this my will if such sale and conversion had been actually made: AND I DECLARE, that (in addition to all powers conferred on trustees by law) (*d*) my trustees shall have full power to let or demise any real or leasehold property for the time being remaining unsold for any term or terms of

Advancement clause.

Power to postpone sale and conversion.

Powers of management.

(*d*) See as to property in Scotland, 30 & 31 Vict. c. 97, ss. 2, 3.

INCLUDING REAL ESTATE IN SCOTLAND AND AUSTRALIA.

years at such rent and upon such conditions as they shall think fit, to accept surrenders of leases and tenancies, to expend money in repairs and improvements, to fell timber and other trees, and generally to manage the property in such manner as they shall think fit, and also to borrow any money on mortgage of the property or any part thereof for the purpose of paying for any improvements or other expenses which in the opinion of my trustees ought to be paid out of capital and not out of income: And I also declare that as regards any property out of Great Britain my trustees may appoint attorneys, agents, and managers with such remuneration as they shall think proper, and may delegate to any such persons all or any of the powers hereby vested in them, and may advance to them any moneys out of my estate for any purpose connected with the management of the said property without being answerable for any loss arising thereby: And I also declare, that any moneys liable to be invested under this my will may be invested in or upon any stocks, funds, or securities of or guaranteed by the government of the United Kingdom or India, or any colonial or provincial government in Australia or New Zealand, or in or upon the stocks, shares, bonds, or securities of any railway or other company, or any municipal corporation or public body in Great Britain, India, Australia, or New Zealand, or in the purchase or upon mortgage of real or heritable or leasehold property in Great Britain, Australia, or New Zealand, and so that any property purchased as aforesaid shall be subject to the trusts and provisions of this my will as if the same had formed part of my estate at my death: And I also declare, that my trustees shall have full power to settle and determine all questions which may arise in relation to the trust property or any part thereof, and may determine whether any money shall for the purposes of this my will be considered as income or capital, and what expenses ought to be paid out of income and capital respectively: And I also declare, that my trustees may make arrangements among themselves for the division between them of the business of the trust, and in particular may leave the management of my property out of Great Britain to any one or more of their number who may be resident there, and the management of my property in Great Britain to any one or more of their number who may be resident there, and in such

Investment clause.

Power to determine questions.

Power to arrange for division of business among trustees.

INCLUDING REAL ESTATE IN SCOTLAND AND AUSTRALIA.

case the trustee or trustees with whom the management of part of my property shall be left as aforesaid shall so long as the arrangement remains in force be competent by himself or themselves to exercise all the powers conferred by this my will in relation to that property except the power of appointing a new trustee or new trustees, and shall be solely responsible for the conduct of the business relating thereto: AND I ALSO DECLARE, that each or any of my trustees may at any time, with the consent of his co-trustee or co-trustees (if any) resign the trusteeship of this my will: AND I ALSO DECLARE, that if and whenever any trustee for the time being of this my will shall die or resign the trusteeship, or refuse or become incapable to act as a trustee, then and in every such case it shall be lawful for the surviving or continuing trustees or trustee for the time being of this my will (and for this purpose every resigning or refusing trustee if willing to act in the execution of this power shall be considered a continuing trustee) or for the executors or administrators of the last acting trustee, to appoint a new trustee or new trustees in the place of the trustee or trustees so dying, or resigning, or refusing, or becoming incapable to act as aforesaid, and upon every such appointment the number of trustees may be altered, provided they be not reduced below two: AND I DECLARE, that all trusts and powers hereby reposed and vested in my trustees may be exercised by the survivors or survivor of them or other the persons or person who shall for the time being be the trustees or trustee of this my will: AND I ALSO DECLARE, that each and every trustee of this my will shall be answerable for his own acts and defaults only, and not for those of any co-trustee, or of any agent or manager appointed under the powers of this my will, nor for any banker, broker or other person with whom moneys or securities may be deposited for safe custody, nor for any other loss unless the same shall be caused by his own wilful act or default, and the trustees may reimburse themselves out of the trust premises all costs and expenses incurred by them in or about the execution of the trusts of this my will.

Power to resign trusteeship and to appoint new trustees.

Provision for the indemnity and reimbursement of trustees.

IN WITNESS, &c.

No. XV.

OF PROPERTY IN ENGLAND AND AMERICA.

WILL *of* PROPERTY *in* ENGLAND, *and in the* UNITED STATES *of* AMERICA (*a*).

I, A. B. of, &c. (*Commencement of will, supra*, p. 563).

Appointment of American executors,

1. I APPOINT C. D. of, &c., and E. F. of, &c., to be my American executors to administer my personal estate in the United States of America, meaning thereby all stocks and loans of corporations created by the United States and by the States thereof, and all loans of any of the States of the United States or of any municipality created by any such State, all policies of insurance, and all debts, moneys, and personal property due or belonging to me at the time of my decease, or which may become due or belong to my estate thereafter not collectible by my English executors by virtue of the grant of letters testamentary to them by any of the Courts of Great Britain.

and of English executors.

2. I APPOINT G. H. of, &c., and I. K. of, &c., to be my English executors to administer all my personal estate other than what is hereinbefore directed to be administered by my American executors.

Devise of property in America to American trustees in trust to realize.

3. I DEVISE all the real estate of every kind situate in any part of the United States of America belonging to me or over which I have any power of disposition unto the said C. D. and E. F., In trust without any more delay than is consistent with the realization of reasonable prices to sell and dispose of all the said real estate and of all that they may acquire after my decease in any way or manner at public or private sale with power to make good deeds of conveyance thereof in fee simple or for any less estate without any obligation on the part of the purchasers to see to or be responsible for the application of the purchase-moneys, and with power as regards any real estate agreed to be sold in my lifetime to perfect the title thereto, and convey the same to the purchasers thereof.

(*a*) This precedent may be easily adapted to property in any British colony.

OF PROPERTY IN ENGLAND AND AMERICA.

4. My American executors and trustees shall remit to my English executors and trustees all moneys arising from the sale of my real estate in America, and from the collection and conversion of my personal estate in America, except so much thereof as may be required for payment of my debts in America and the expenses of administering my estate in America, and the receipt of my English trustees for all moneys remitted to them as aforesaid shall be a sufficient discharge for the same.

American executors and trustees to remit money to English executors and trustees.

5. I devise and bequeath all my real estate and chattels real in England or Wales, and all my personal estate other than what is hereinbefore directed to be administered by my American trustees, unto the said G. H. and I. K. (hereinafter called "my English trustees"), In trust to sell, call in, and convert into money the same at such times and in such manner as they shall think fit.

Devise and bequest of real and personal estate in England to English trustees in trust to sell and convert.

6. My English trustees shall stand possessed of all moneys arising from the sale and conversion of my real and personal estate hereinbefore devised and bequeathed to them, and of all moneys remitted to them by my American executors and trustees as aforesaid, upon the trusts following (that is to say), My English trustees shall with and out of the same pay my funeral and testamentary expenses and debts (except such debts as shall be paid by my American executors and trustees), and the legacies bequeathed by this my will, and shall invest, &c. (*Trusts for investment and remainder of will as in Precedent No. II., supra*, pp. 564 to 567, *substituting* "my English trustees" *for* "my trustees").

Trusts of moneys received by English trustees.

In witness, &c.

No. XVI.

OF A MARRIED WOMAN.

WILL *of a* MARRIED WOMAN: APPOINTMENT *by her under a power contained in a* SETTLEMENT *of* TRUST MONEYS *in favour of her* HUSBAND *for life, and after his decease in favour of her* CHILDREN, *with* PROVISO *that* SHARE *of* SON *shall be retained on* SPECIAL TRUSTS *to prevent* ALIENATION *as far as possible, and* RESIDUARY BEQUEST *to* HUSBAND.

Recite settlement.

Number of children.

Appointment of trust moneys pursuant to power.

To husband for life.

After his decease for children of testatrix.

Proviso that share of son shall be retained upon special trusts against alienation, &c.

I, A. B. (*testatrix*), the wife of, &c., HEREBY DECLARE this to be my last will and testament: WHEREAS, &c. (*Recite settlement whereby trust funds were settled on testatrix for life, and after her death on her children, as she should appoint, with power to appoint a life interest to her husband*): AND WHEREAS I have eight children now living, all of whom have attained the age of twenty-one years, Now, in exercise of the powers for this purpose given to me by the said indenture, and of all other powers (if any) me hereunto enabling, I hereby direct and appoint that the trustees or trustee for the time being of the said indenture shall, after my decease, stand possessed of all the moneys, stocks, funds and securities for the time being, subject to the trusts thereof (hereinafter called "the trust fund hereby appointed"), UPON TRUST to pay the income thereof to my said husband, if he shall survive me, during his life, and after his decease, IN TRUST for all my children living at my decease, in equal shares, subject as to the share of my son D. B. to the following provisions (that is to say): PROVIDED ALWAYS and I declare that if my son D. B. shall survive me, the said trustees or trustee shall retain his share of the trust fund hereby appointed, and pay the income thereof to the said D. B. until his death, or until the expiration of a term of twenty-one years computed from my death (*a*), or until he shall become bankrupt, or assign or charge the said income, or some part thereof, or do or suffer something whereby the said income, if belonging absolutely to him, or some part thereof, would become vested in or payable to some other

(*a*) This limit is inserted in order to prevent the application of the rule against perpetuities.

person, whichever of the aforesaid events shall first happen; and from and after the determination of the foregoing trust (hereinafter referred to as "the first trust"), shall hold the said share IN TRUST as follows (that is to say):—If the first trust shall determine by reason of the expiration of the said term of twenty-one years in the lifetime of the said D. B., then IN TRUST for the said D. B. absolutely; AND if the first trust shall determine by reason of the death of the said D. B. before the expiration of the said term, then IN TRUST for such person or persons, and in such manner as the said D. B. shall by his will appoint; and in default of such appointment, and so far as any such appointment shall not extend, IN TRUST for my other children in equal shares: AND if the first trust shall determine in the lifetime of the said D. B., and before the expiration of the said term, by reason of his bankruptcy or of any such other event as aforesaid, then IN TRUST for my other children in equal shares: AND I GIVE all income which may be owing to me at my death, including the proportionate part belonging to my estate of the income of the trust fund hereby appointed for the current half-year in which my death happens, and all other (if any) the property belonging to me at my death for my separate use, and which I have power to dispose of by will, unto my said husband absolutely: AND I APPOINT my said husband to be the executor of this my will.

OF A MARRIED WOMAN.

Gift of residue of property to husband absolutely and appointment of him to be executor.

IN WITNESS, &c.

No. XVII.

WILL *of a* TRADER *carrying on* BUSINESS *by himself, containing* DIRECTIONS *as to his business.*

OF A TRADER.

I, A. B. of, &c. (*Commencement of will and appointment of executors and trustees, and gift of legacies, supra*, p. 563): I GIVE, DEVISE, AND BEQUEATH all my property not hereby otherwise disposed of unto my trustees, UPON TRUST that my trustees shall (subject to the directions hereinafter contained with respect to

Devise and bequest of residue of real and personal property to trustees for sale and conversion.

OF A TRADER.

my business) sell, &c. (*Trusts for sale and conversion, and trusts of proceeds, as in Precedent No. II., supra*, p. 564). And with respect to the business of a —— now carried on by me at —— aforesaid, or any other business in which I may be engaged at my decease, I empower my trustees to continue the same for so long as they shall think fit, or to discontinue the same at any time and to wind up the affairs thereof, with liberty for my trustees if and so long as they shall continue the business to employ therein the whole or any part of the capital which shall be employed therein at my decease, and also such further part (if any) of my estate as they shall think proper, and with liberty also to employ managers, agents, and clerks, and also to admit any person or persons as a partner or partners with them in the business, and generally to act in the conduct of the said business as they shall in their absolute discretion think fit, without being answerable for any loss arising thereby. And (subject to the provisions hereinbefore contained as to the said business) I authorize my trustees to postpone the sale and conversion of my property, or any part thereof, for so long as they shall think fit, and I declare that the rents, profits, and income of my property for the time being remaining unsold and unconverted (including the profits of the said business while carried on by my trustees) shall be paid, &c. (*Rest of will as in Precedent No. II.*)

Powers to trustees to continue or wind up business, with special powers as to management of business.

IN WITNESS, &c.

No. XVIII.

OF A PARTNER, WITH DIRECTIONS AS TO WINDING UP BUSINESS.

WILL *of a person carrying on a* TRADE *in* PARTNERSHIP *with other persons, containing* DIRECTIONS *as to* WINDING UP *the* BUSINESS.

I, A. B. of, &c. (*Commencement of will and appointment of executors, and trustees, and guardians, supra*, p. 563 : *Bequest of legacies*) : I GIVE, DEVISE, AND BEQUEATH all my property, whether real or personal, not hereby otherwise disposed of, unto my trustees, UPON TRUST that my trustees shall (subject to the

Devise and bequest of residue of real and personal estate to

directions hereinafter contained with respect to my partnership business) sell, &c. (*Trusts for sale and conversion: Trusts of proceeds as in Precedent No. II., supra*, p. 564); AND with respect to my share and interest in the business of ——, now carried on by me at —— in partnership with —— (*names*), under the firm of —— and Co., I empower my trustees to adjust and settle all accounts and transactions relating to the said partnership business, and to wind up the affairs and concerns thereof, and ascertain the amount of my share and interest therein, either according to the provisions of the articles of partnership under which the said business shall be carried on at my decease, or upon such other terms and in such other manner as may be agreed on between them and my surviving partners or partner, with power for my trustees to refer to arbitration, or otherwise to compromise or settle any question that may arise in or about the winding up of the said concern, in such manner as they may think fit, and generally to do and execute all such acts and things in relation to the premises as may appear to them necessary or expedient, without being answerable for any loss which may arise thereby: AND I AUTHORIZE my trustees, if they shall in their discretion think fit, to permit the whole or any part of the amount which on taking the accounts of the said partnership shall appear to be due to my estate, as and for my share and interest in the said business, to remain in the said business as a loan for any period not exceeding seven years from my decease, but so that the repayment thereof, with interest after the rate of £5 per cent. per annum, shall be secured by the joint and several bond of the persons or person for the time being continuing to carry on the said business either with or without any other security for the same, as my trustees shall think fit. AND (subject to the provisions hereinbefore contained as to the said business) I empower my trustees to postpone the sale and conversion of my property, or any part thereof, for so long as they shall think fit: AND I DIRECT that the net rents and income of my real and personal estate, which shall for the time being remain unsold and unconverted (including the interest of any capital left in the said business as aforesaid), shall be paid, &c. (*Direction as to income of unconverted property; Clauses as to investments and appointment of new trustees, supra*, p. 566.

IN WITNESS, &c.

OF A PARTNER, WITH DIRECTIONS AS TO WINDING UP BUSINESS.

trustees for sale and conversion.

Power to trustees to wind up share of testator in partnership business.

Power to trustees to permit testator's share of capital to remain in business for seven years.

Power to trustees to postpone sale and conversion.

No. XIX.

OF A PARTNER, WITH POWER TO CONTINUE BUSINESS.

WILL *of a person carrying on* TRADE *in* PARTNERSHIP, *giving* POWERS *to* CONTINUE *same.*

I, A. B. of, &c. (*First part of will as in last Precedent*): And with respect to the business of a ——, carried on by me in partnership with ——, under articles of partnership, dated the —— day of ——, 18—, I EMPOWER my trustees to make such arrangements as may seem to them desirable for carrying into effect the provisions of the said articles of partnership so far as the same shall be in force at my decease, with liberty to determine in such manner as may be advised by counsel or otherwise, any question which may arise as to the construction of the said articles or otherwise in relation thereto: AND I ALSO EMPOWER my trustees, if they shall think fit so to do, to vary the provisions of the said articles of partnership in such manner as may be agreed on between them and my surviving partners or partner, AND (subject to the provisions of the said articles of partnership, if and so long as the same shall remain in force) I EMPOWER my trustees to continue the said business for such period after my decease as they may think fit, with liberty to carry on the same either alone or in partnership with the persons or person (if any) who shall be my partners or partner at my decease or with any other person or persons, and upon such terms as to division of profits and otherwise as may be agreed on, and with liberty also to employ in the said business the whole or any part of my capital which shall be employed therein at my decease, and also such further part (if any) of my estate and effects as to my trustees shall seem proper, and with liberty also to employ such managers, agents and clerks in or about the said business, and to allow to them such salaries and wages as my trustees shall think fit: AND my trustees shall have the fullest powers and discretions as to the mode of conducting the said business and otherwise in relation thereto as if they were the absolute owners thereof: AND I ALSO EMPOWER my trustees (subject as aforesaid) to make such arrangements as may seem to them desirable for the

Power to trustees to make arrangements for carrying into effect articles of partnership,

and to vary articles.

Power to trustees to continue business.

Power to make arrangements for

OF A PARTNER, WITH POWER TO CONTINUE BUSINESS.

introduction at any time or times into the said business of any one or more of my sons whom my trustees shall think fit to introduce into the said business, and for the employment of such son or sons in the same business in the meantime as a manager or clerk, or in any other capacity at such salary or wages and upon such terms as my trustees shall think fit: AND I EMPOWER my trustees at their discretion to advance and lend to any son or sons of mine who shall be introduced into the said business as aforesaid, either alone or jointly with his or their partner or partners (if any), or to continue in the possession or under the control of such son or sons, either alone or jointly as aforesaid, the whole or any part of my estate and effects for the time being employed in such business, and also if my trustees shall think fit any further part of my estate and effects for such time and upon such terms and conditions, and either with or without security, as my trustees shall think fit: AND I DECLARE that the capital so advanced or lent to or left in the possession or under the control of such son or sons either alone or jointly as aforesaid shall be considered as a debt to my estate, and shall bear interest after the rate of £5 per cent. per annum, but any son or sons of mine introduced into the said business as aforesaid shall not pay anything to my estate for the goodwill of the said business: PROVIDED ALWAYS AND I FURTHER DECLARE, that my trustees may (if they think fit) leave the entire management of the said business while so continued as aforesaid to the other partner or partners (if any), or if there shall be no such partner, then to a manager or managers to be appointed for that purpose by my trustees, and my trustees shall be under no obligation to attend personally to the said business or be in anywise responsible for any loss which may arise by their omission to attend personally to the said business or to interfere therein: AND ALSO, that if one or more of my trustees for the time being shall be unwilling to engage in and continue such business as aforesaid, he or they may allow his or their co-trustee or co-trustees to engage in and continue the same and to act alone in relation to the trusts of this my will so far as regards such business: AND I ALSO DECLARE that my trustees for the time being carrying on the said business shall be entitled to retain and divide between themselves for their own use the annual sum of £—— out of the profits of the said business as a

introduction of son into business,

and to advance capital to son so introduced.

Power to leave management of business to partners,

or to co-trustee.

Trustees to be entitled to allowance for carrying on business.

OF A PARTNER, WITH POWER TO CONTINUE BUSINESS.

remuneration for their trouble: And (subject to the said articles of partnership) I empower my trustees to discontinue and wind up the said business so far as regards my estate either immediately after my decease or at such other time or times as they shall think fit, and to make such arrangements in relation thereto as they may deem proper, and in particular my trustees may leave to any partner, agent, or other person the collection of any outstanding debts, and may give such time as my trustees shall think fit for payment by any partner or partners of the sum which under any such arrangement as aforesaid shall become payable by him or them to my estate, and either with or without security, and may appoint or concur in appointing such accountants, valuers, and other persons as may be deemed proper for taking the accounts of the said partnership and for valuing any matters which may be capable of valuation, and may settle and adjust accounts, may refer to arbitration, or otherwise compromise and settle any questions and differences, and generally shall have the fullest power and discretion in relation to the winding up of the said business so as if they were the absolute owners thereof: And subject to the provisions hereinbefore contained as to the said business, I empower my trustees to postpone the sale and conversion of my property, or any part thereof, for so long as they shall think fit; and I declare that the income of any property remaining unsold and unconverted, including the profits of the said business while carried on by my trustees, shall, after the payment thereout of such outgoings and expenses as in the opinion of my trustees ought to be paid out of income, be paid, &c. (*Directions as to income of unconverted property and investment clause, and appointment of new trustees, supra*, pp. 565, 566.)

Power to wind up business.

In witness, &c.

No. XX.

WILL *of a* TRADER BEQUEST *to* WIFE *of use of* FURNITURE, *&c., during* WIDOWHOOD; DEVISE *and* BEQUEST *of* REAL *and* PERSONAL *estate to trustees;* DIRECTION *to carry on* BUSINESS *until* YOUNGEST SON *of Testator attains* TWENTY-ONE, *and during the same period to pay* ANNUAL SUM *to Testator's* WIFE, *determinable on her* SECOND MARRIAGE; *When youngest Son attains twenty-one,* BUSINESS *to be offered for* SALE *to* SONS *in* SUCCESSION, *and* LEASE *of* BUSINESS PREMISES *to be made to purchaser;* ANNUAL SUM *to be paid to* WIFE, *and subject thereto,* SURPLUS *to go to all the* CHILDREN *equally; Usual provisions.*

OF TRADER, WITH DIRECTIONS TO CARRY ON BUSINESS.

I, A. B. of, &c. (*Commencement and appointment of executors and trustees and guardians, supra,* p. 563): I GIVE to my wife —— (*name*) during her life, if she shall so long remain my widow, the use and enjoyment of all my books, pictures, prints, plate, linen, china, household furniture, and household effects; AND I DIRECT that after her decease or second marriage (which shall first happen) the same shall fall into the residue of my personal estate (*Bequest of legacies*): I GIVE all the residue of my estate and effects, both real and personal, unto my trustees, upon the trusts and with and subject to the powers and provisions hereinafter declared concerning the same (that is to say), UPON TRUST that my trustees shall continue to carry on the business of ——, now carried on by me at ——, until the youngest for the time being of my four sons, namely (*names of four sons*) shall attain the age of twenty-one years, with liberty for my trustees to use and employ in the said business such part of my residuary estate, or the proceeds thereof, as they may think fit, and with liberty for that purpose to resort to any accumulations of income or profits which may have arisen under the direction to accumulate hereinafter contained, and with liberty also for my trustees to employ any or either of my said sons or any other person or persons to be the manager or managers of the said

Bequest to wife of use of books, &c., during widowhood.

Bequest of residue to trustees.

Upon trust to carry on business until youngest son attains twenty-one.

OF TRADER, WITH DIRECTIONS TO CARRY ON BUSINESS.

business, and also to employ such assistants and servants in the said business, and to pay and allow to such manager or managers, assistants and servants, such salaries and wages, and generally to conduct and carry on the said business in such manner as my trustees shall in their discretion think fit: AND SUBJECT to the direction hereinbefore contained in relation to the carrying on of the said business, I direct that my trustees shall sell and convert into money my real estate and residuary personal estate, or such part thereof as shall not consist of money, and shall out of the moneys to arise from such sale and conversion, and out of my ready money, pay my funeral and testamentary expenses, and debts, and the legacies hereby bequeathed, and shall invest the residue of the said moneys, with power to vary the investments thereof: AND I FURTHER DECLARE that until the youngest for the time being of my said four sons shall attain the age of twenty-one years, my trustees shall out of the income of my residuary estate, or the investments for the time being representing the same (including as part of such income the profits arising from the said business), in the first place pay to my said wife so long as she shall remain my widow, for her own use, the annual sum of £——, she thereout maintaining and educating such of my children as shall for the time being be under the age of twenty-one years, and in the next place pay to each child of mine who shall have attained the age of twenty-one years the annual sum of £——, and if my said wife shall die or marry again before all my children shall have attained the age of twenty-one years, then my trustees shall, out of the said income, pay and apply such annual sum as they may think fit for or towards the maintenance and education of such of my children as shall for the time being be under the age of twenty-one years, and shall accumulate the surplus of the said income in the way of compound interest, by investing the same and all the resulting income thereof: AND I FURTHER DECLARE, that when and so soon as the youngest for the time being of my said four sons shall have attained the age of twenty-one years, my trustees shall offer the said business for sale to any one of my sons who may then be manager of the said business, and if he shall refuse the offer, or if neither of my sons shall then be the manager of the said business, my trustees shall offer the said business for sale to

And subject thereto, to sell and convert.

Trusts of proceeds.

Until youngest son attains twenty-one, an annual sum to be paid to wife during widowhood for maintenance of infant children, and also annual sum to each child of age.

Surplus income to be accumulated.

When youngest son attains twenty-one business to be offered for sale to such son as shall be manager; if no such son, or if he refuses, then to all the

OF TRADER, WITH DIRECTIONS TO CARRY ON BUSINESS.

my sons then living (other than any son who may have previously refused as aforesaid) in order one after the other according to seniority of age, and if all my sons shall decline such offer, my trustees shall sell the said business to any person or persons and in such manner as they may think fit: AND I DECLARE that each of my sons to whom an offer of sale shall be made as aforesaid shall be allowed ten days within which he must either accept or decline such offer, and if he shall not accept the same within such ten days, he shall be deemed to have declined it: AND I FURTHER DECLARE that if either of my sons shall accept the said offer, the price to be paid for the said business shall be ascertained by the valuation of two indifferent persons, one to be named by my trustees and the other by the purchaser, or in case of their disagreement, by an umpire to be chosen by such two valuers, and if either party shall fail to name a valuer, or to notify it in writing to the other party for the space of ten days after the day on which the offer shall be accepted, or if the valuer named by either party shall refuse or neglect to act, then the valuation shall be made by the valuer of the other party alone: PROVIDED ALWAYS that no purchaser under this my will shall be obliged or concerned to see or inquire whether the business has been duly offered for sale to my sons as hereby directed, nor whether any such offer shall have been accepted or declined, nor shall the title of such purchaser be afterwards impeached on the ground that the said business had not previously been duly offered for sale as aforesaid, or that any such offer (if made) had not been duly declined: AND I FURTHER DECLARE that if either of my said sons shall purchase the business as aforesaid, my trustees shall grant to him a lease of the premises at which the business is carried on, consisting of —— (*describing it*), and of all the plant and machinery in and about the same for any term not exceeding fourteen years in possession from the granting of such lease, at a rent the amount whereof shall be determined by valuation in the same manner as is hereinbefore directed with regard to the purchase-money of the business, And the said lease shall contain covenants by the lessee for keeping in repair the said premises and the plant and machinery therein, for substituting plant and machinery of equal value in the place of any that may be removed by the lessee during the term, and for deliver-

sons in order according to seniority; and if all the sons decline, then to be sold to any other person.

Offer to be accepted within given time.

Price to be fixed by valuation.

Proviso that no purchaser shall be bound to inquire whether offer has been made, &c.

Lease to be granted of business premises to purchaser of business.

OF TRADER, WITH DIRECTIONS TO CARRY ON BUSINESS.

ing up the said premises, plant, and machinery at the end of the term in as good repair and condition as at the commencement of such term, and such other covenants and conditions as are usual in leases of the like nature: AND I FURTHER DECLARE that if either of my sons shall purchase the business as aforesaid, he shall pay one-third at least of the purchase-money at the time of completing the purchase, but the remaining two-thirds, or any less proportion of the purchase-money, may remain a debt from him to my estate for any period not exceeding five years from the time of completion, and shall be secured in the meantime, with interest thereon, after the rate of £4 per cent. per annum by a mortgage of all the interest of the purchaser under this my will in my residuary estate or the proceeds thereof: AND I FURTHER DECLARE that when and so soon as the youngest for the time being of my said four sons shall have attained the age of twenty-one years, my trustees shall stand possessed of my residuary estate (including the proceeds of the aforesaid business), IN TRUST to pay out of the income thereof the annual sum of £100 to my said wife during her life, if she shall so long remain my widow, by equal half-yearly payments, the first of such payments to be made at the expiration of six calendar months after the time hereby appointed for the commencement of the same, and subject to the same annual sum, IN TRUST for all my children who being a son or sons shall attain the age of twenty-one years, or being a daughter or daughters shall attain that age or marry, in equal shares, and if there shall be only one such child, the whole to go to that one child: AND I EMPOWER my trustees, at their discretion, to raise any part not exceeding one moiety of the presumptive share for the time being of any infant child of mine in my residuary estate, and to apply the same for his or her preferment, advancement, or benefit as my trustees shall think fit: I ALSO empower my trustees to postpone the sale and conversion of my real and personal estate, or any part thereof, for so long as they shall think fit, and in the meantime to let or demise any real estate including chattels real, for any term of years not exceeding twenty-one years, to take effect in possession at such rent and subject to such covenants and conditions as my trustees shall think fit, but without prejudice to the directions hereinbefore

If son purchases one-third of purchase-money to be paid down, and remaining two-thirds may remain on security of his share in residue.

Trusts of residue after youngest child has attained twenty-one.

To pay annual sum to wife during widowhood.

And subject thereto for all the testator's children equally.

Advancement clause.

Power to postpone sale and conversion.

contained as to granting a lease of the said business premises to any son of mine who may purchase the said business: AND I DECLARE that any moneys, &c. (*Investment clause; Clause as to appointment of new trustees, supra*, p. 566.)

OF TRADER, WITH DIRECTIONS TO CARRY ON BUSINESS.

IN WITNESS, &c.

No. XXI.

WILL *giving a* FARM *to* WIFE *for life, then to* ELDEST SON, *and* RESIDUE *to* WIFE: APPOINTMENT *of* EXECUTRIX *and* TRUSTEES *for purposes of* SETTLED LAND ACTS (*a*). (*Short form.*)

FARM TO WIFE FOR LIFE, AND THEN TO SON.

THIS IS THE LAST WILL of me, A. B. of, &c.: I GIVE my farm and lands in the parish of ——, called —— Farm, to my wife C. B., during her life, and after her death to my eldest son D. B., absolutely; and I give all the rest of my property to my said wife: AND I APPOINT my said wife to be the executrix of this my will, and my said wife and son to be the trustees of this my will as regards the said farm and lands for the purposes of the Settled Land Act, 1882; and if my said son dies in the lifetime of my said wife, I empower her to appoint a new trustee for the purposes aforesaid in his place.

Devise of farm to wife for life, then to son absolutely, and residue to wife.

Appointment of wife to be executrix, and wife and son to be trustees for purposes of Settled Land Act.

IN WITNESS, &c.

(*a*) Under this precedent the wife may sell or lease the farm, after giving notice of her intention in that behalf to the son, under the Settled Land Act, 1882.

No. XXII.

DEVISE OF REAL ESTATE TO SONS SUCCESSIVELY IN TAIL, &c., SUBJECT TO RENT-CHARGE TO WIFE AND BEQUEST OF PERSONALTY IN FAVOUR OF CHILDREN.

WILL *of* REAL *and* PERSONAL PROPERTY; DEVISE *of* FREEHOLDS *in parish of* ——, *to secure Rent-charge to Wife, and subject thereto to* SONS *successively in* TAIL, *with remainder to* DAUGHTERS *as tenants in* COMMON *in* TAIL, *with* CROSS REMAINDERS (*a*); BEQUEST *of* LEASEHOLDS *in same County upon Trusts similar to Freeholds;* DEVISE *and* BEQUEST *of Residue of Real and Personal Estate to Trustees upon Trust for Sale and Conversion;* TRUSTS *of* RESIDUARY MONEYS *for all the Testator's Children with usual provisions.*

Appointment of executors and trustees.

I, A. B. of, &c. (*Commencement of will*). I APPOINT C. D. of, &c., and E. F. of, &c. (hereinafter called "my trustees"), to be the executors and trustees of this my will for all the purposes herein expressed, and also for the purposes of the Settled Land Acts, 1882 to 1890, and for the purposes mentioned in section 42 of the Conveyancing and Law of Property Act, 1881: I APPOINT my wife C. B., during her life, and after her death my trustees to be the guardian and guardians of my infant children: I DEVISE all my freehold messuages, tenements, lands, and hereditaments, situate in the parish of ——, in the county of ——, to the following uses (that is to say): To THE USE that my said wife C. B. may receive thereout during her life a yearly rent-charge of £——, to be paid by equal quarterly payments, the first of such payments to be made at the expiration of three calendar months after my decease; and subject to the said rent-charge, To THE USE of my first and other sons successively according to seniority in tail, with remainder, To THE USE of all my daughters in equal shares as tenants in common in tail, with cross remainders between or among them in tail, with remainder, To THE USE of my own right heirs for ever: AND I DECLARE

Devise of freeholds to use that wife shall take rent-charge for life.

Remainder to sons successively in tail, remainder to daughters as tenants in common in tail.

(*a*) It is unnecessary to give the trustees of the above will a power of sale over the real property, as the powers given by the Settled Land Act are sufficient.

DEVISE OF REAL ESTATE TO SONS SUCCESSIVELY IN TAIL, &c., SUBJECT TO RENT-CHARGE TO WIFE AND BEQUEST OF PERSONALTY IN FAVOUR OF CHILDREN.

that if my trustees shall enter into possession of the said hereditaments or any undivided share thereof during the infancy of a tenant in tail by purchase under this my will, and such tenant in tail shall die during infancy, and if a daughter without having been married, then, and in such case, the accumulation (if any) arising during such infancy shall be held upon such trusts as the same would be held upon if the same were capital money arising from any sale of the said hereditaments under the Settled Land Acts, 1882 to 1890: I GIVE AND BEQUEATH all my leasehold messuages, lands, tenements, and hereditaments, situate in the parish of ——, in the county of ——, unto my trustees, for all the estate, term, and interest which I shall at my decease have therein respectively, UPON trust out of the rents and profits of the said premises to pay the rents and observe and perform the covenants by and in the several leases thereof reserved and contained, and on the part of the lessees to be paid, observed, and performed, and subject thereto, UPON SUCH TRUSTS, and with and subject to such powers and provisions as will correspond as nearly as the different tenures will permit with the uses, powers and provisions hereinbefore declared and contained concerning the said freehold hereditaments situate in the same parish, but so as not to multiply charges, and so also that the said leasehold premises shall not vest absolutely in any person hereby made tenant in tail by purchase of the said freehold hereditaments, unless such person shall attain the age of twenty-one years, but on the death of such person under that age shall go and devolve as if the same were freehold of inheritance included in the devise of hereditaments of that tenure hereinbefore contained: AND AS TO ALL THE REST and residue of my real and personal estate, I give, devise, and bequeath the same unto my trustees, UPON trust, to sell, call in, and convert into money the same, or such part thereof as shall not consist of money, and with and out of the moneys to arise from such sale, calling in, and conversion into money, and out of the money of which I shall be possessed at my death, to pay my funeral and testamentary expenses and debts (other than mortgage debts affecting the said freehold and leasehold hereditaments situate in the parish of —— aforesaid hereinbefore devised and bequeathed respectively), and the legacies bequeathed by this my will, or by any codicil hereto, and to invest the residue of the said

Direction as to accumulations of rents arising during infancy of tenant in tail.

Bequest of leaseholds upon trust to pay rents, &c.,

and subject thereto upon trusts corresponding with uses of freeholds.

Devise and bequest of residuary real and personal estate to trustees upon trust for sale and conversion.

DEVISE OF REAL ESTATE TO SONS SUCCESSIVELY IN TAIL, &c., SUBJECT TO RENT-CHARGE TO WIFE AND BEQUEST OF PERSONALTY IN FAVOUR OF CHILDREN.

moneys, with power to vary the investments thereof: AND I DECLARE that my trustees shall stand possessed of the said residuary moneys, and the investments for the time being representing the same (hereinafter called "the residuary trust funds"): IN TRUST, &c. (*for children equally, with usual provisions, supra*, pp. 564 to 567).

IN WITNESS, &c.

Trusts of residuary moneys.

No. XXIII.

DEVISE OF REAL ESTATE IN STRICT SETTLEMENT.

WILL *of* REAL *and* PERSONAL ESTATE; BEQUEST *of* LEASEHOLD DWELLING-HOUSE *and* HOUSEHOLD EFFECTS *to* WIFE; DEVISE *of* FREEHOLDS *to use of Trustees for term of* FIVE HUNDRED YEARS, *with remainder to use that* WIFE *may take a* RENT-CHARGE, *and subject thereto to uses in favour of* SONS *and* DAUGHTERS *successively in strict settlement, with an ultimate remainder to Testator's* RIGHT HEIRS; TRUSTS *of* TERM *of* FIVE HUNDRED YEARS, *to pay* DEBTS, *&c., in aid of personalty, and then to raise* PORTIONS *for Testator's* YOUNGER CHILDREN; NAME *and* ARMS CLAUSE; POWER *to each* MALE TENANT *for* LIFE *to* JOINTURE *wife, and to each* FEMALE TENANT *for* LIFE *to appoint* RENT-CHARGE *to* HUSBAND; POWER *to each* TENANT *for* LIFE *to charge with portions for* YOUNGER CHILDREN; ADDITIONAL POWERS; DEVISE *and* BEQUEST *of* COPYHOLDS *and* LEASEHOLDS *to Trustees upon trusts to* CORRESPOND *with uses of* FREEHOLDS; BEQUEST *of* JEWELS, *&c., as* HEIR-LOOMS; BEQUEST *of* LEGACIES; BEQUEST *of* RESIDUE *of Personalty to Trustees upon same trusts as money arising from* SALE *of Real Estate.*

I, A. B. of, &c. (*Commencement of will, supra*, p. 563.)

Appointment of executors and trustees and guardians.

1. I APPOINT C. D. of, &c., E. F. of, &c., and G. H. of, &c. (hereinafter called "my trustees"), to be the executors and trustees of this my will for all the purposes herein expressed,

and also for the purposes of the Settled Land Acts, 1882 to 1890, and for the purposes mentioned in section 42 of the Conveyancing and Law of Property Act, 1881: AND I appoint my dear wife —— during her life, and after her death my trustees, to be the guardian and guardians of my infant children.

DEVISE OF REAL ESTATE IN STRICT SETTLEMENT.

2. I GIVE AND BEQUEATH my leasehold messuage or dwelling-house, situate and being No. —— in ——, in which I am now residing, and the appurtenances, for all my term, estate, and interest therein, and all my books, plate, linen, china, household goods, furniture, and effects, which shall be in or about the said messuage or dwelling-house at the time of my decease, unto my dear wife —— absolutely.

Bequest of leasehold dwelling-house and household effects.

3. I GIVE AND DEVISE my capital messuage or mansion-house called ——, and all my manors, messuages, lands, tenements, and hereditaments, situate in the county of ——, or elsewhere in England or Wales, and being freehold of inheritance, To THE USES following (that is to say): To THE USE of my trustees for the term of five hundred years, computed from the day of my decease, upon the trusts hereinafter declared concerning the same: AND subject thereto, To THE USE that my wife, &c. (*shall receive a rent-charge for life, supra*, p. 616); and subject thereto, To THE USE of my eldest son M. B. during his life, without impeachment of waste, with remainder To THE USE of his first and other sons successively according to seniority in tail male, with remainder To THE USE of my second son N. B., during his life, without impeachment of waste, with remainder To THE USE of his first and other sons successively according to seniority in tail male, with remainder To THE USE of my sons hereafter to be born, and their issue male in succession, so that the elder of my after-born sons and his issue male shall be always preferred to and take before the younger of my after-born sons and his or their issue male, and so also that each after-born son of mine shall take an estate for his life without impeachment of waste, with remainder after his decease to the use of his first and other sons successively according to seniority in tail male, with remainder To THE USE of my daughter O. B., during her life, without impeachment of waste, with remainder To THE USE of the first and other sons of the said O. B. successively according to seniority in tail male, with remainder To THE USE of my second daughter P. B., during her life, without impeachment

Devise of real estate.

To trustees for five hundred years.

Subject to term, that wife may take rent-charge.

Subject thereto to eldest son for life, remainder to his sons successively in tail male,

remainder to second son and his first and other sons *similiter*,

remainder to after-born sons and their first and other sons *similiter*,

remainder to eldest daughter and her first and other sons *similiter*,

remainder to second daughter and

DEVISE OF REAL ESTATE IN STRICT SETTLEMENT.

of waste, with remainder To THE USE of the first and other sons of the said P. B. successively according to seniority in tail male, with remainder To THE USE of my daughters hereafter to be born, and their issue male in succession, so that the elder of my after-born daughters and her issue male shall be always preferred to and take before the younger of my after-born daughters and her or their issue male, and so also that every after-born daughter of mine shall take an estate for her life, without impeachment of waste, with remainder to her first and other sons successively according to seniority in tail male, with remainder To THE USE of the first and other sons of the said M. B. successively, according to seniority in tail general, with remainder To THE USE of the first and other daughters of the said M. B. successively, according to seniority in tail general, with remainder, &c. (*Similar remainders to the first and other sons of N. B. successively in tail general, then to the first and other daughters of N. B. successively in tail general*), with remainder To THE USE of the sons in succession of every son of mine hereafter to be born and their issue, so that the sons of every elder of my after-born sons and their issue shall be always preferred to and take before the sons of every younger of my after-born sons and their issue, and so also that the sons of each after-born son of mine shall take successively according to seniority in tail general, with remainder To THE USE of the daughters in succession of every after-born son of mine and their issue, so that the daughters of every elder of my after-born sons and their issue shall be always preferred to and take before the daughters of every younger of my after-born sons and their issue, and so also that the daughters of each after-born son of mine shall take successively according to seniority in tail general, with remainder To THE USE of, &c. (*First and other sons of O. B. successively in tail general, then to first and other daughters of O. B. successively in tail general, then to first and other sons and first and other daughters of P. B. successively in tail general, then to first and other sons and first and other daughters of after-born daughters of testator successively in tail general*), with remainder To THE USE of my brother Q. B., during his life, without impeachment of waste, with remainder, &c. (*Remainder to sons and daughters of Q. B., in strict settlement, similar to those to sons and daughters of testator*), with remainder To THE USE of my own right heirs for ever.

her first and other sons *similiter*,

remainder to after-born daughters and their first and other sons *similiter*,

remainder to first and other sons of eldest son successively in tail general,

remainder to first and other daughters in tail general,

remainder to sons and daughters of second and after-born sons *similiter*,

remainder to testator's brother for life, remainders over.

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4. THE said hereditaments are hereinbefore limited to my trustees for the said term of five hundred years, upon the following trusts (that is to say): UPON TRUST that my trustees shall in the first place, by mortgage of the premises comprised in the said term, or any part thereof, for all or any part of the said term, or by any other reasonable ways and means, raise in aid of my personal estate (if insufficient) such sum or sums of money as may be required to satisfy my funeral and testamentary expenses and debts, and the legacies bequeathed by this my will or any codicil hereto, AND UPON FURTHER TRUST that my trustees shall, by mortgage, sale, or other disposition of the said hereditaments or any part thereof, for all or any part of the said term, or by any other reasonable ways and means, raise the sum of £—— for each and every of my children living at my decease who being a son shall attain the age of twenty-one years, or being a daughter shall attain that age or marry (other than and not being a son or daughter entitled for the time being to the said hereditaments under the limitations hereinbefore contained as tenant for life in possession), with power for my trustees at any time or times during the minority of any son of mine (not being a son entitled for the time being, as aforesaid) to raise any sum or sums of money, not exceeding together the sum of £——, and apply the same for the preferment, advancement, or benefit of such son as my trustees shall think fit, and in part satisfaction of his portion under the trust last hereinbefore declared; AND ALSO shall from and after my decease raise out of the rents and profits of the said hereditaments, and apply for the maintenance and education of each or any son and unmarried daughter of mine entitled for the time being in expectancy to a portion under the trusts aforesaid, such annual sum as my trustees shall think fit, not exceeding in any one year for each such child what the interest of his or her expectant portion would amount to after the rate of £4 per cent. per annum, with liberty for my trustees to pay the same to the guardian or any of the guardians of such child for the purpose aforesaid, without being liable to see to the application thereof: AND UPON FURTHER TRUST that so long as the portion of any child of mine who shall have attained a vested interest therein shall remain unpaid, my trustees shall, out of the rents and profits of the said hereditaments, raise and pay to such child

Trusts of term of five hundred years.

To raise money to pay debts, &c., in aid of personal estate.

To raise portions for younger children of testator,

and to raise annual sum for maintenance of children entitled in expectancy,

and also to raise interest on unpaid portions,

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interest thereon after the rate of £4 per cent. per annum, by half-yearly payments, and so that if the child to whom interest shall be payable as aforesaid shall be a married daughter under the age of twenty-one years, her receipt shall be a sufficient discharge for the same notwithstanding her infancy: AND UPON FURTHER TRUST that my trustees shall raise by some or one of the ways and means aforesaid such sum or sums of money as shall be required for the payment of the costs and expenses attending the execution of the trusts hereinbefore declared concerning the said term of five hundred years, and shall apply the moneys to be so raised as last aforesaid, in payment of the said costs and expenses accordingly: AND UPON FURTHER TRUST that my trustees shall permit the rents and profits of the said hereditaments, or so much thereof as shall remain after answering the trusts and purposes aforesaid, to be received by the person or persons for the time being entitled to the said hereditaments in remainder immediately expectant on the said term.

and to raise costs and expenses.

Ultimate trust for person entitled in remainder.

Direction as to accumulation of rents during minority of tenant for life or in tail.

5. IF my trustees shall enter into possession of the hereditaments hereinbefore devised during the infancy of any tenant for life or tenant in tail by purchase under the statutory provision in that behalf, and such tenant for life or in tail shall die during infancy, and being a female without having been married, the accumulations (if any) which shall have arisen during such infancy, shall be held upon such trusts as would be applicable thereto if the same were capital money arising from a sale of the said hereditaments under the Settled Land Acts, 1882 to 1890.

Name and arms clause.

6. EVERY person who shall become entitled under this my will to the hereditaments hereinbefore devised as tenant for life or tenant in tail in possession, and who shall not then bear the surname and arms of B., shall within twelve calendar months after he or she shall have become so entitled in possession as aforesaid, or if he or she shall be under the age of twenty-one years, then within twelve calendar months after he or she shall have attained that age, assume the surname and arms of B., and apply for and endeavour to obtain a royal licence or other proper authority for that purpose: And if the person so becoming entitled as aforesaid shall be a female and shall marry, then her husband shall within twelve calendar months after she shall have become entitled in possession as aforesaid, or after her

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marriage (which shall last happen), also assume the said surname and arms, and apply for and endeavour to obtain a royal licence or other proper authority for that purpose: And if the person so becoming entitled as aforesaid, or in the case of a married woman her husband, shall fail to comply with the direction last hereinbefore contained, not being prevented from so doing by death within the said period, then and in such case, and at the expiration of the said twelve calendar months, the estate of such person under this my will shall cease and determine: And if the person whose estate shall so determine shall be a tenant for life, the said hereditaments shall thenceforth go and remain to the use of my trustees during the life of such person, in trust to permit the rents and profits thereof to be received by the person or persons for the time being entitled to the said hereditaments in remainder immediately expectant on the death of such tenant for life, and so that if the person for the time being entitled as aforesaid shall be a minor, my trustees shall have the same powers of management and of applying and dealing with the said rents and profits as they would have had if the person whose estate shall have so determined as aforesaid were dead; And if the person whose estate shall so determine shall be a tenant in tail, then and in such case the said hereditaments shall immediately go and devolve to the person or persons who would be entitled thereto under this my will if such tenant in tail were then dead without issue.

Power to each tenant for life to appoint rent-charge to wife or husband,

7. It shall be lawful for every person hereby made tenant for life of the hereditaments hereinbefore devised, either before or after he or she shall become entitled under this my will to the possession or receipt of the rents and profits of the said hereditaments, and either before or after his or her marriage, by any deed or deeds, or by his or her will (but subject and without prejudice to the uses and estates (if any) preceding the use or estate of the person making such appointment, and to the powers annexed to such preceding uses and estates, and also subject and without prejudice to the uses or estates (if any) which shall or may be limited in exercise of the same powers (or any of them)), to appoint to any wife or husband of the person for the time being exercising this power, for her or his life, any yearly rent-charge not exceeding the yearly sum of £——, to be charged on the said hereditaments, or any part thereof, and to be

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paid at such times and in such manner as the person exercising this power shall think fit: And also by any deed or deeds or by his or her will (but subject and without prejudice as aforesaid) to charge the said hereditaments or any part thereof with any sum of money for the portions of his or her younger children, not exceeding for one child £5,000, for two children between them £8,000, for three children between them £12,000, or for four or more children between them £15,000, to vest in and be paid to such child or children at such age or time, ages or times, not being earlier as to any son than his age of twenty-one years, except by way of advancement under any power to be conferred for that purpose as hereinafter is mentioned, nor as to any daughter than her age of twenty-one years or day of marriage, in such shares, if more than one, and in such manner as the person for the time being exercising this power shall direct or appoint: And also by the same or any other deed, or by his or her will, to limit and appoint the hereditaments comprised in such charge to trustees for any term of years without impeachment of waste upon such trusts for raising the money to be charged for portions as aforesaid, together with the costs and expenses of and incidental to the execution of such trusts, as the person for the time being exercising this power shall think fit: And the person for the time being exercising this power may by such appointment direct or authorise the trustees of the term to be thereby created, during the minority of any child who if of full age would be entitled in possession to a portion, to raise out of the rents and profits of the hereditaments comprised in the same term or otherwise such annual sum as the person for the time being exercising this power shall direct, or as the said trustees shall think fit, not exceeding what interest on the expectant portion of such minor would amount to after the rate of £4 per cent. per annum, and to apply the same for the maintenance and education of such minor, with liberty for the said trustees to pay the same to the guardian or any of the guardians of such minor for the purpose aforesaid, without being liable to see to the application thereof: And the person for the time being exercising this power may also, if he thinks fit, by such appointment, authorise the said trustees to raise by mortgage or otherwise any part or parts not exceeding together one moiety of the presumptive portion of any son under such appointment,

and charge with portions for younger children,

and limit term to trustees to raise portions.

Power to authorise trustees to raise annual sum for maintenance of minors entitled to portions in expectancy.

And to raise one half of presumptive portions of sons for advancement.

and to apply the same for the advancement, preferment, or benefit of such son: PROVIDED ALWAYS, that if any tenant for life under this my will shall exercise the power of appointing a rent-charge or of charging with portions conferred by this article before he or she shall under this my will become entitled to the possession or the receipt of the rents and profits of the said hereditaments, then and in every such case the rent-charge or sum of money charged for portions under such exercise of the said power shall not be a lien or charge on the hereditaments expressed to be charged therewith, or be payable or carry interest, unless and until the person by whom the same shall have been charged or some issue of his or hers shall, or if of full age would, have become entitled to such possession or receipt as aforesaid: PROVIDED ALSO, that the said hereditaments shall not, under the power of appointing rent-charges conferred by this article be at any one time subject or liable to the payment of yearly rent-charges exceeding in the whole (with the said yearly rent-charge of £—— hereinbefore limited to my said wife, if the same shall for the time being be subsisting) the yearly sum of £——, so that if the said hereditaments or any part thereof would, but for this proviso be charged with a greater yearly sum in the whole than the said sum of £——, the payment of the sum occasioning such excess, or such part thereof as shall occasion the same, shall during the time of such excess be suspended, and for this purpose rent-charges shall have precedence according to the priority in order of limitation of the estates of the persons by whom the same shall have been created: PROVIDED ALSO, that the said hereditaments shall not, under the power of charging with portions conferred by this article, be made subject or liable to the payment of any sum or sums of money exceeding the principal sum of £—— in the whole, and moneys to be charged for portions as aforesaid shall have precedence according to the priority in order of limitation of the estates of the several persons by whom the same shall have been charged.

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No rent-charge or portion to take effect in possession unless person appointing same or his issue becomes entitled in possession.

Proviso limiting the total amount of annual rent-charge under powers.

Proviso limiting the total amount to be charged for portions under aforesaid power.

8. THE term "younger children" hereinbefore used with reference to the powers of charging with portions shall be construed to mean and include, 1st, every son of the person for the time being exercising the power (in this article called the appointor) not being at the time when he attains the age of twenty-one years an eldest or only son entitled under this my

Definition of term "younger children."

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will to the hereditaments hereby devised for an estate tail in possession or in remainder immediately expectant on the life estate of his parent, or on some estate prior in order of limitation to such life estate; and 2ndly, every daughter of the appointor not being, at the time when she attains the age of twenty-one years or when she marries (which shall first happen), an eldest or only daughter entitled for the time being under this my will to the said hereditaments for an estate tail in possession: PROVIDED ALWAYS, that the appointor may, if he thinks fit, declare by the deed or will by which he exercises the said power, that an eldest or only son attaining the age of twenty-one years and dying before his estate tail falls into possession without having disentailed the said hereditaments with the consent of the protector of the settlement shall be deemed a younger son, and in such case but not otherwise he shall be deemed a younger son accordingly (*a*).

Additional powers.

[9. THE tenant for life or other the person or persons having for the time being power under the Settled Land Acts, 1882 to 1890, to sell or lease the hereditaments hereinbefore devised (including my trustees on behalf of any infant) shall have the following powers in addition to those conferred by the said Acts, namely (*Additional powers, as in Precedent of Settlements No. XXVIII., Art.* 7, *supra*, p. 382).]

[10. (*Clause as to improvements as in same Precedent, Article* 8, *supra*, p. 383).]

11. IT shall not be necessary for any tenant for life under this my will when intending, &c. (*Notice need not be given of intended sales, &c., as in same Precedent, Article* 9, *supra*, p. 383).

12, 13. (*Clauses as in same Precedent, Articles* 10, 11, *substituting* "any tenant for life under this my will" *for* "the said A. B.")

Devise and bequest of copyholds and leaseholds to trustees, upon trusts to correspond with uses of freehold.

14. I GIVE, DEVISE, AND BEQUEATH all my messuages, lands, tenements, and hereditaments, wheresoever situate, being copyhold, or leasehold for a life or lives or for years unto my trustees, IN TRUST, out of the rents and profits of the said copyhold premises, to pay and render the customary rents and services, and out of the rents and profits of the said leasehold premises to pay the rents, and observe and perform the covenants and conditions

(*a*) See p. 395, note (*x*).

reserved by and contained in the leases under which the same shall be held, and by and on the lessee's part to be paid, observed, and performed, and subject thereto as to all the said copyhold and leasehold premises, UPON such trusts, and with, under, and subject to such powers and provisions as will correspond as nearly as the difference of tenure will permit, with the uses, trusts, powers, and provisions hereinbefore declared and contained concerning the freehold hereditaments hereinbefore devised, but so as not to increase or multiply charges or powers of charging, and so that any copyhold hereditaments not admitting of the creation of estates tail, and any leasehold hereditaments for years, shall not vest absolutely in any person hereby made tenant in tail by purchase of the said freehold hereditaments, unless he or she shall attain the age of twenty-one years, but on the death of such person under that age shall go and devolve as if the same were freehold of inheritance included in the devise of hereditaments of that tenure hereinbefore contained.

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15. I GIVE AND BEQUEATH all my plate, pictures, books, and furniture, which shall at my decease be in or about my said capital messuage or mansion-house, called ——, or belong or be appropriated thereto, unto my trustees, IN TRUST to permit the same to be held and enjoyed as heirlooms by the person or persons for the time being entitled to the said capital messuage or mansion-house under the limitations of this my will as nearly as the rules of law and equity will permit, but so that the said heirlooms shall not vest absolutely in any person hereby made tenant in tail by purchase of the said capital messuage or mansion-house, unless he or she shall attain the age of twenty-one years, but upon the death of such person under that age shall go and devolve to the person or persons who shall thereupon become entitled to the said capital messuage or mansion-house under the aforesaid limitations: AND I DIRECT that an inventory shall be made, as soon as conveniently can be after my decease, of the plate and other articles hereinbefore bequeathed as heirlooms, and that one copy of such inventory shall be signed by my trustees, and delivered to and kept by the person for the time being entitled to the use of the said heirlooms under this my will, and that one other copy thereof shall be signed by the person for the time being entitled as last aforesaid and retained

Bequest of plate, &c., as heirlooms to go with real estate.

Inventory to be made.

DEVISE OF REAL ESTATE IN STRICT SETTLEMENT.

by my trustees: And I direct that the person or persons for the time being entitled to the use of the said heirlooms under this my will shall keep the same in a good state of preservation and adequately insured against loss or damage by fire: But I expressly declare that my trustees shall not be bound or obliged to see that the said heirlooms are preserved or insured as aforesaid, or be answerable for any loss or injury which may happen thereto, unless in some specific case they or he shall be called on to interfere by some person or persons beneficially interested in the said heirlooms under this my will: And I also direct that the power of selling the said heirlooms or any of them, and of purchasing chattels with the proceeds of such sale conferred by section 37 of the Settled Land Act, 1882, may be exercised by any tenant for life in possession under this my will without its being necessary to obtain an order of the Court for that purpose, provided that such sale or purchase shall be made with the consent of my trustee.

Usufructuary to preserve heirlooms, but trustees not to be responsible for injury.

Heirlooms may be sold with consent of trustees without order of Court.

Legacies.

16. I give and bequeath, &c. (*Bequest of legacies*).

Bequest of residuary personalty upon trusts of moneys arising from sale of freeholds.

17. I give and bequeath all my personal estate not hereby otherwise disposed of unto my trustees, Upon trust that my trustees shall call in and convert into money the same or such part thereof as shall not consist of money, and shall with and out of the money produced by such calling in and conversion and with and out of my ready money, pay my funeral and testamentary expenses and debts, and the legacies hereby bequeathed, and shall stand possessed of the residue of the said moneys, upon the trusts which would be applicable thereto if the same were capital money arising from a sale of part of the freehold hereditaments hereinbefore devised under the Settled Land Acts.

18. (*Investment clause, supra*, p. 384, *substituting* "this my will" *for* "these presents.")

In witness, &c. (*a*).

(*a*) In the above Precedent there is no declaration as to the person by whom the statutory power of appointing new trustees is to be exercisable, the provision in this respect in the Act being sufficient.

No. XXIV.

DEVISE *and* BEQUEST *of* REAL *and* PERSONAL ESTATE; BEQUEST *of* PERSONAL ESTATE *to* TRUSTEES *to pay Debts, &c., and* INVEST *surplus and apply income for* MAINTENANCE *of* SON *during his* MINORITY, *and accumulate surplus;* TRUST *for* SON *when he attains* TWENTY-ONE, *but if he should die under twenty-one, then for* SISTER *absolutely;* DEVISE *of* REAL ESTATE *to* TRUSTEES, *subject to Mortgages thereon,* UPON TRUST *to manage and lease same until the Son should attain twenty-one, and subject thereto, to* SON *absolutely, but if he should die a Minor, then to* NEPHEWS *equally in Fee;* DIRECTION *to* TRUSTEES *to apply* RENTS *during minority of* SON *for his* MAINTENANCE, *and accumulate* SURPLUS; POWER *to apply* SURPLUS INCOME *and* ACCUMULATIONS *in Payment of Mortgages and other Debts;* POWER *to concur in* TRANSFER *of* MORTGAGES, *or to* SELL *or* MORTGAGE *for Payment of* MORTGAGES, &c.; GENERAL POWER *of* SALE *or* MORTGAGE *for Payment of* DEBTS; USUAL PROVISIONS.

OF TESTATOR'S PROPERTY WITH VARIOUS SPECIAL PROVISIONS.

I, A. B. of, &c. (*commencement and appointment of executors and trustees and guardians, supra*, p. 563): I GIVE AND BEQUEATH all my personal estate and effects (except chattels real included in the devise of real estate hereinafter contained) unto my trustees, UPON TRUST that my trustees shall call in and convert into money the same or such part thereof as shall not consist of money, and shall apply the moneys to arise from such calling in and conversion, and the money of which I shall be possessed at my death, so far as the said moneys will extend, in the payment of my funeral and testamentary expenses and debts (including mortgage debts affecting my real estates hereinafter devised), and shall invest the surplus (if any) of such moneys with power for my trustees to vary the investments thereof from time to time, and shall apply the income arising from such investments in or towards the maintenance of my son G. B., until

Bequest of personal estate to trustees.

Upon trust to convert same into money, and thereout pay debts, &c., and

invest surplus (if any),

and apply income for maintenance of testator's son.

OF TESTATOR'S PROPERTY WITH VARIOUS SPECIAL PROVISIONS.

he shall attain the age of twenty-one years or previously die, with power for my trustees, at their discretion, at any time during the minority of my said son, to sell and convert into money the whole or any part of the said trust funds, and to apply the moneys arising thereby for the advancement, preferment, or otherwise for the benefit of my said son, as my trustees shall think fit, AND SUBJECT to the trusts aforesaid shall stand possessed of the said trust funds, and the income thereof, or so much thereof respectively as shall not be applied in manner aforesaid, IN TRUST for my said son G. B., as and when he shall attain the age of twenty-one years, but if my said son shall die under that age, then IN TRUST for my sister S. H.: I GIVE, DEVISE, AND BEQUEATH all my messuages, farms, lands, tenements, and hereditaments of every tenure, situate at ——, in the county of ——, and all other my real and leasehold estates (if any) whatsoever and wheresoever (all which premises included in this present devise and bequest are hereinafter called "my real estates") unto and to the use of my trustees, UPON TRUST that my trustees shall receive the rents and profits of and manage my real estates and every part thereof, as they may think proper, with power to demise or let the same, or any part or parts thereof, either from year to year, or for any term or number of years, either upon repairing, building, or husbandry leases, and generally upon such terms as my trustees shall think proper (yet so that no demise or lease shall be made of any copyhold or customary hereditaments contrary to the custom of the manor or manors of which the same respectively shall be holden), with power to accept surrenders from and make allowances to and arrangements with tenants and others, and with all other powers expedient or desirable for the due management of my real estates, until my said son G. B. shall attain the age of twenty-one years or previously die: AND UPON TRUST that my trustees do and shall assure my real estates (subject to the mortgages, incumbrances, and charges then existing thereon) unto and to the use of my said son G. B., absolutely when and so soon as he shall attain the age of twenty-one years: BUT IF my said son shall die under the age of twenty-one years, then UPON TRUST that my trustees do and shall assure the same (subject as aforesaid) unto and to the use of my nephews, L. M. and N. O., absolutely, as tenants in common in

Power to raise money for advancement of son and subject to aforesaid trusts, in trust for son absolutely, on his attaining twenty-one.

If he should die under twenty-one then to sister absolutely.

Devise of real estate.

To trustees (subject to charges hereon), upon trust to manage and lease same until son attains twenty-one,

and subject thereto to son in fee;

if son dies under twenty-one, to nephews.

OF TESTATOR'S PROPERTY WITH VARIOUS SPECIAL PROVISIONS.

equal shares: And during the minority of my said son I direct that my trustees shall apply the net rents and profits of my real estates in the first place in and towards payment of the interest which for the time being shall be due and payable in respect of the mortgage debts affecting the same, or such of the said debts as shall for the time being remain due and unsatisfied, in aid of my personal estate, and shall in the next place apply the said rents and profits, or any part thereof, for or towards the maintenance or education, or otherwise for the benefit of my said son, and shall invest the surplus (if any) of such rents and profits so as to accumulate at compound interest, with liberty to vary the investments thereof from time to time, and shall stand possessed of the said accumulations, In trust for the person or persons who shall become absolutely entitled to my real estates under the trusts hereinbefore declared, with liberty nevertheless for my trustees to resort to the accumulations of any preceding year or years, and to apply the same in any succeeding year or years for the maintenance and education, or otherwise for the benefit of my said son; and with liberty also for my trustees, at any time or times, to apply the said surplus rents and profits and the accumulations thereof, or any part or parts thereof respectively in or towards the payment and discharge of the mortgage debts and principal moneys which for the time being shall affect my real estates or any of them, or my other debts generally, or any part or parts thereof respectively: And I authorize and empower my trustees at any time or times, or from time to time during the minority of my said son, to join in any transfer of any mortgage or other charge or incumbrance upon all or any part of my real estates, or to give further security for, or to pay off all or any part of the money secured by any such mortgage, charge, or incumbrance, and for that purpose to adjust and settle any accounts with any mortgagee or incumbrancer, and if my trustees shall think fit, to raise any further sum or sums in order to discharge any such mortgage, charge, or incumbrance, and the interest thereon respectively, together with the costs of procuring and raising the same, either by mortgage or by absolute sale, or other disposition of all or any part of my real estates, or by, with, or out of the rents and profits of my real estates, or any of them, or by any other reasonable ways and means, and to apply the

Direction to keep down interest on mortgages during son's minority.

Power of maintenance and accumulation of surplus.

Power to apply accumulations in payment of debts.

Power to concur in transfer of mortgages, &c., or to sell or mortgage for payment of mortgages.

OF TESTATOR'S PROPERTY WITH VARIOUS SPECIAL PROVISIONS.

moneys so to be raised in discharge of such mortgage, charge, or incumbrance accordingly: AND I ALSO empower my trustees, by mortgaging, selling, or otherwise disposing of my real estates, or any of them, or by, with, and out of the rents and profits of my real estates, or any of them, or by all or any of the aforesaid ways or means, or by any other reasonable ways or means, to levy and raise any sum and sums of money which my trustees may think fit to levy and raise for the payment of my funeral and testamentary expenses and my other and remaining debts, and to pay and apply the moneys to be levied and raised by the ways and means aforesaid in or towards satisfaction and discharge of my funeral and testamentary expenses and debts accordingly: PROVIDED ALWAYS, that as between the person or persons entitled to my personal estate, and the person or persons entitled to my real estates, my personal estate is to be considered as the primary fund, and my real estates the secondary fund, for the payment of my funeral and testamentary expenses, and my mortgage and other debts: AND I DECLARE that every mortgage made under the foregoing powers may contain any powers and provisions which my trustees shall think proper, and that no purchaser or mortgagee of any part of my real estates, upon any sale or mortgage expressed to be made under the trusts and power of this my will, shall be bound or concerned to see whether my personal estate shall have been insufficient for the payment of my debts, nor whether the money paid or advanced by him is actually wanted or ought to be raised for all or any of the purposes aforesaid, or otherwise as to the necessity or propriety of such sale or mortgage, nor shall such purchaser or mortgagee be affected by notice that such sale or mortgage is unnecessary or improper. (*Investment clause*, *supra*, p. 566.)

General power of sale or mortgage for payment of other debts.

Personal estate to be nevertheless primary fund for payment of debts.

IN WITNESS, &c.

No. XXV.

WILL *by a* TENANT FOR LIFE *in* REMAINDER *of* SETTLED ESTATES, *in exercise of* POWERS *of* JOINTURING *and* CHARGING *with* PORTIONS *for* YOUNGER CHILDREN, *subject to the* PRIOR LIMITATIONS *contained in the* WILL *creating the powers.*

WILL IN EXERCISE OF POWERS TO JOINTURE AND CHARGE WITH PORTIONS.

THIS IS THE LAST WILL AND TESTAMENT of me, A. B. of, &c.: WHEREAS my late father, X. B., Esq., deceased, by his will dated, &c. (*Recite will of testator's father devising freehold estates to his eldest son Y. B. for life, with remainder to Y. B.'s first and other sons in tail male, with remainder to his second son (the present testator) for life, with remainder to his first and other sons in tail male, with divers remainders over. Power to each tenant for life to jointure and charge with portions and maintenance for younger children in the usual form*): AND WHEREAS my elder brother Y. B. is living, but he has no issue: AND WHEREAS I have several children by C. B. my wife, all of whom are infants: AND WHEREAS I am desirous of exercising the several powers of jointuring my wife and of charging with portions and maintenance for my younger children given to me by my father's said will as aforesaid in the manner hereinafter expressed, and I am also desirous of disposing of my own estate and effects in the manner hereinafter expressed: NOW I HEREBY REVOKE all former wills and testamentary appointments and dispositions made by me, and declare as follows:—

Commencement.

Recite will of testator's father, and that testator has several children.

1. IN exercise and execution of the power for this purpose given to me by my father's said will as aforesaid, and of all other powers (if any) me hereunto enabling, I HEREBY APPOINT unto my said wife a yearly rent-charge of £500 to be charged upon and payable out of all and singular the hereditaments devised in strict settlement by my father's said will aforesaid, and to commence from my decease or from the decease and failure of issue male of the said Y. B. (which shall last happen), the said yearly rent-charge to be paid by equal quarterly payments, the first of such payments to be made on the expiration of three calendar months after the time hereby appointed for the commencement of the said rent-charge, &c.

Testator in exercise of power appoints a jointure to his wife.

WILL IN EXERCISE OF POWERS TO JOINTURE AND CHARGE WITH PORTIONS.

Testator, in exercise of power, charges settled estates with portions.

2. In exercise and execution of the power for this purpose given to me by my father's said will as aforesaid, and of all other powers (if any) me hereunto enabling, I HEREBY CHARGE all and singular the hereditaments devised in strict settlement by my father's said will with the sum of £15,000 for the portions of such of my younger children as being sons shall attain the age of twenty-one years, or being daughters shall attain that age or marry, in equal shares, and for this purpose the expression "younger children" shall be construed to mean and include every daughter of mine, and also every son not being at his birth or becoming during his minority an eldest or only son entitled to the said hereditaments for an estate tail in possession or in remainder immediately expectant on some estate prior in order of limitation to my life estate: AND I DECLARE that if any son of mine being an eldest or only son, when he attains the age of twenty-one years, shall afterwards die before his estate tail under my father's said will falls into possession, and without having disentailed the said hereditaments or any part thereof, with the consent of the said Y. B. as the protector of the settlement, such son shall also be deemed a younger son for the purpose of this charge (*a*): PROVIDED ALWAYS, that if only one younger child of mine being a son shall attain the age of twenty-one years, or being a daughter shall attain that age or marry, such child shall have the sum of £5,000 only for his or her portion, and if two younger children of mine and no more being a son or sons shall attain the age of twenty-one years, or being a daughter or daughters shall attain that age or marry, such two children shall have between them the sum of £8,000 only for their portions, and if three younger children of mine and no more being a son or sons shall attain the age of twenty-one years, or being a daughter or daughters shall attain that age or marry, such three children shall have between them the sum of £12,000 and no more for their portions, AND in either of the aforesaid cases the said sum of £15,000 shall be reduced to an amount sufficient to provide the said sum of £5,000, £8,000, or £12,000 as the case may be required for such portion or portions, together with such sum or sums of money (if any) as may be applied for the benefit of a son or sons who shall not live to attain a portion or portions

(*a*) See notes at pp. 375, 395, *supra*.

WILL IN EXERCISE OF POWERS TO JOINTURE AND CHARGE WITH PORTIONS.

under the power of advancement hereinafter contained, and the difference between the said sum of £15,000 and such reduced amount shall sink into the said hereditaments and cease to be charged thereon.

Testator limits settled estates to trustees for a term of 500 years.

3. In exercise of the power for this purpose given to me by my father's said will as aforesaid, and of all other powers (if any) me hereunto enabling, I HEREBY APPOINT that (subject and without prejudice to the uses and estates preceding my estate for life under my father's said will and to the powers annexed to such preceding uses and estates, and to the uses and estates limited in exercise of such powers, and subject and without prejudice also to the yearly rent-charge hereinbefore limited to my said wife and to the said powers and remedies for enforcing payment thereof) all and singular the hereditaments devised in strict settlement by my father's said will shall go, remain, and be TO THE USE of C. D. of, &c., and E. F. of, &c., for the term of five hundred years, computed from my decease, without impeachment of waste, UPON TRUST that the said trustees shall (subject to the trusts hereinbefore declared for securing the payment of the said yearly rent-charge), by mortgage, or other disposition of the said hereditaments, or any part thereof, for all or any part of the said term, or by and out of the rents and profits thereof, or by any other reasonable ways or means, levy and raise such sum of money as under the foregoing charge in that behalf shall become payable for a portion or portions as aforesaid, at the time or respective times when the same shall so become payable, and shall pay and apply the moneys to be so raised accordingly; PROVIDED ALWAYS, that it shall be lawful for the said trustees at any time or times after my decease, or the decease and failure of issue male of the said Y. B. (which shall last happen), at the discretion of the said trustees, to raise by the ways and means aforesaid, or any of them, any part or parts not exceeding together the moiety of the vested or expectant portion of any child under the foregoing charge, and to apply the same for the advancement, preferment, or benefit of such child, in such manner as the said trustees shall think fit: AND UPON FURTHER TRUST that in case at my decease or at the decease and failure of issue male of the said Y. B. (which shall last happen), any child of mine entitled for the time being in expectancy to a portion under the trust aforesaid, shall be under the age of twenty-one

Further trust to raise money for portions of younger children.

Advancement clause.

Further trust to raise annual sum for maintenance of children entitled to expectant portions.

WILL IN EXERCISE OF POWERS TO JOINTURE AND CHARGE WITH PORTIONS.

years, then and in such case the trustees of the said term shall thenceforth during the minority of each such child by some or one of the ways and means aforesaid, levy and raise such annual sum as the said trustees shall think fit, not exceeding interest after the rate of £4 per cent. per annum on the amount of his or her expectant portion under the trusts aforesaid, and shall apply the same annual sum for or towards the maintenance and education of such child, in such manner as the said trustees or trustee shall think fit, with liberty for the said trustees to pay the same annual sum to the guardian or any of the guardians of such child for the purpose aforesaid, without being liable to see to the application thereof: AND UPON FURTHER TRUST that so long as any portion which shall for the time have become payable shall remain unpaid, the trustees, &c. (*Trust to raise interest on unpaid portions, supra*, p. 621): AND UPON FURTHER TRUST that the said trustees do and shall by some or one of the ways and means aforesaid, levy and raise such sum or sums of money as shall be sufficient for payment of the costs and expenses incurred by them or him in or about the execution of the trusts of the said term, and shall pay and apply the moneys to be so raised in payment of such costs and expenses accordingly: AND (subject to the trusts hereinbefore declared) do and shall permit the rents and profits of the said hereditaments, or so much thereof as shall not be required for any of the purposes aforesaid, to be received by the person or persons entitled for the time being to the said hereditaments, in reversion or remainder immediately expectant on the said term.

Further trust to raise costs and expenses,

and to pay surplus rents to reversioner.

Bequest of legacies.

4. I BEQUEATH the following legacies (that is to say) (*Bequest of legacies*).

Bequest of residue to wife.

5. I GIVE, DEVISE, AND BEQUEATH all the rest, residue, and remainder of my property, whether real or personal, unto my said wife absolutely.

Appointment of executors and guardians.

6. I APPOINT my said wife and the said C. D. and E. F. executrix and executors of this my will: AND I APPOINT my said wife during her life, and after her decease the said C. D. and E. F. and the survivor of them, the guardian and guardians of my infant children.

IN WITNESS, &c.

No. XXVI.

CODICIL *appointing a* TRUSTEE *and* EXECUTOR *in the place of a* DECEASED TRUSTEE *and* EXECUTOR *appointed by the* TESTATOR'S WILL.

CODICIL APPOINTING NEW TRUSTEE IN PLACE OF DECEASED TRUSTEE.

THIS IS A CODICIL TO THE LAST WILL AND TESTAMENT of me, A. B. of, &c., which will bears date the —— day of ——: WHEREAS by my said will I have appointed C. D. to be one of the trustees and executors thereof [and also one of the guardians of my infant children after the decease of my wife]: AND WHEREAS the said C. D. has lately died: NOW I HEREBY APPOINT E. F. of, &c., to be one of the trustees and executors of my said will [and also to be one of the guardians of my infant children after the decease of my said wife], in the place of the said C. D. deceased: AND I GIVE to the said E. F. a legacy of £—— for his trouble in acting as an executor and trustee of my said will; and I declare that my said will shall be construed and take effect as if the name of the said E. F. were inserted in my said will throughout instead of the name of the said C. D., AND IN ALL OTHER RESPECTS I confirm my said will.

IN WITNESS, &c.

No. XXVII.

CODICIL *revoking the Appointment of* ONE *of the* TRUSTEES *and* EXECUTORS, *and appointing a* NEW ONE *in his place.*

CODICIL REVOKING APPOINTMENT OF TRUSTEE AND APPOINTING NEW ONE.

THIS IS A CODICIL, &c. (*see supra*): WHEREAS by my said will I have appointed C. D. to be one of the trustees and executors thereof [and also one of the guardians of my infant children after the decease of my wife], and I have given him a legacy of £—— for his trouble in acting as such trustee and executor:

CODICIL REVOKING APPOINTMENT OF TRUSTEE AND APPOINTING NEW ONE.

Now I HEREBY REVOKE the appointment of the said C. D. as such trustee and executor [and guardian], and also the said legacy of £—— given to him as aforesaid, AND I APPOINT E. F. of, &c., to be a trustee and executor of my said will [and also to be a guardian of my infant children after the decease of my said wife], in the place of the said C. D., and I give to the said E. F. a legacy of £—— for his trouble in acting as such trustee and executor: AND I DECLARE that my said will shall be construed and take effect as if the name of the said E. F. were inserted in my said will throughout instead of the name of the said C. D.: AND IN ALL OTHER RESPECTS I confirm my said will.

IN WITNESS, &c.

No. XXVIII.

CODICIL APPOINTING ADDITIONAL TRUSTEE.

CODICIL *appointing an* ADDITIONAL TRUSTEE *and* EXECUTOR.

THIS IS A CODICIL, &c. (*see supra*): WHEREAS by my said will I have appointed C. D. of, &c., and E. F. of, &c., to be the trustees and executors of my said will [and also to be the guardians of my infant children after the decease of my wife]: NOW I HEREBY APPOINT G. H. of, &c., to be an additional trustee and executor of my said will [and to be an additional guardian of my infant children after the decease of my said wife], and I declare that my said will shall be read and construed as if the names of the said C. D., E. F., and G. H., were inserted therein instead of the names of the said C. D. and E. F., and that all the trusts and powers in and by my said will reposed in and made exerciseable by the said C. D. and E. F., shall be exerciseable by the said C. D., E. F., and G. H.: AND IN ALL OTHER RESPECTS I confirm my said will.

IN WITNESS, &c.

No. XXIX.

CODICIL *directing that a* SUM *paid to one of the Testator's* CHILDREN *in his life shall be taken in part* SATISFACTION *of his* SHARE *under* WILL.

CODICIL, WITH DIRECTION AS TO MONEY ADVANCED TO SON.

THIS IS A CODICIL, &c. (*see supra*): WHEREAS by my said will I have directed that the residue of the moneys to arise from the sale and conversion of my real and personal estate shall be divided equally between my children who being sons attain the age of twenty-one years, or being daughters attain that age or marry: AND WHEREAS since the making of my said will I have paid the sum of £—— to or for the benefit of my son G. B.: NOW I HEREBY DECLARE that the said sum of £——, so as aforesaid paid to or for the benefit of my said son G. B., shall be taken by him in part satisfaction of his share under my said will, and accordingly that the residue of the moneys to arise from the sale of my real and personal estate shall be divided between the children among whom the same is directed to be divided by my said will, in such manner that the share of the said G. B. shall be less in amount than the shares of the other children by the sum of £——: AND IN ALL OTHER RESPECTS I confirm my said will.

Recital of will.

That testator has paid money for son.

Declaration that money so paid shall be taken in part satisfaction of son's share.

IN WITNESS, &c.

No. XXX.

CODICIL *giving a* POWER *to* TRUSTEES *to purchase* GOVERNMENT ANNUITIES, *or to* INVEST FUNDS *to meet* ANNUITIES *bequeathed by Will, and thereupon* DISCHARGING *property which by the Will was charged with the same.*

CODICIL GIVING POWER TO TRUSTEES TO PURCHASE GOVERNMENT ANNUITIES.

THIS IS A CODICIL, &c.: WHEREAS I have by my said will bequeathed the following annuities, namely, —— (*state*

Recital of will giving estate to C. D. charged with said annuities.

CODICIL GIVING POWER TO TRUSTEES TO PURCHASE GOVERNMENT ANNUITIES.

particulars of annuities), and have charged the same on my freehold estates in ——, which estates so charged as aforesaid are by my said will devised and bequeathed (with the residue of my real and personal estate) to C. D. absolutely: Now I HEREBY DECLARE, with respect to each and every of the said several annuities bequeathed by my said will, that if the said C. D., his heirs, executors, administrators, or assigns, shall at any time during the life of the annuitant to whom each or any of the said annuities is bequeathed as aforesaid, purchase in his name, or in the name or names of his nominee or nominees, a government annuity for the life of such annuitant equal in amount to the annuity bequeathed to him as aforesaid, and so that the first half-yearly payment of the said government annuity shall become due on a day not being later than the day on which the next half-yearly payment of the annuity for which the same shall be substituted would have become due if such purchase had not been made, or if the said C. D., his heirs, executors, administrators, or assigns, shall at any time during the life of each or any such annuitant as aforesaid, transfer or cause to be transferred into the names of the trustees for the time being of my said will, stocks, funds, shares, or securities of the nature authorized as investments by my said will, of such an amount or value that the annual interest, dividends, or income thereof shall at the time of such investments be sufficient to pay the annuity bequeathed to such annuitant as aforesaid, to the intent that the said trustees shall stand possessed of the said stocks, funds, shares, and securities, UPON TRUST out of the interest, dividends, and income thereof, or if the same shall be insufficient, then out of the corpus thereof to pay the same annuity at the time at which the same is made payable by my said will, then, and in every or any such case as aforesaid, the annuitant for whom any such government annuity shall be purchased, or whose annuity shall be so secured as aforesaid (as the case may be), shall accept such government annuity, or the annuity to be so secured as aforesaid (as the case may be), in lieu and satisfaction of the annuity charged on the said premises in —— as aforesaid, and the said premises shall thenceforth be absolutely freed and discharged from the same annuity and from all claims and demands in respect thereof: AND I FURTHER DECLARE that in case and so often as any government annuity shall be purchased as aforesaid,

Declaration that if devisee purchases a government annuity of like amount or sets apart funds to meet any annuity, then annuitants shall accept same and discharge estate.

Annuitant shall if requested execute release.

the annuitant for whom the same shall be so purchased shall for the greater satisfaction of the said C. D., his heirs, executors, administrators, or assigns, execute such deed or deeds (if any) as he or they may require for evidencing the release of the said premises from the same annuity, such deed to be prepared and executed at the expense of the party requiring the same: AND I ALSO DECLARE that if any or either of the said annuities shall be secured by the transfer of stocks, funds, shares, or securities, into the names or name of the trustees of my said will as aforesaid, a statement in writing signed by the trustees that stocks, funds, shares, or securities of the required amount or value have been transferred into their names upon the trust aforesaid shall be sufficient and conclusive evidence of the fact so stated: AND IN ALL OTHER RESPECTS I confirm my said will.

IN WITNESS, &c.

CODICIL GIVING POWER TO TRUSTEES TO PURCHASE GOVERNMENT ANNUITIES.

Statement of trustees to be conclusive evidence that funds have been set apart to meet annuity.

No. XXXI.

CODICIL *settling the Shares of* DAUGHTERS, *so as to make their interests cease on becoming* RELIGIOUS SISTERS.

CODICIL AS TO SHARE OF DAUGHTER BECOMING A RELIGIOUS SISTER.

THIS IS A CODICIL, &c.: WHEREAS I am apprehensive that one or more of my daughters may be induced to enter into a religious sisterhood, and I desire therefore to make the following alterations in my will respecting the shares of my daughters in my residuary trust funds; (that is to say) I direct my trustees to stand possessed of the share of each of my daughters who shall attain the age of twenty-one years, and shall not then be married UPON TRUST to pay the income thereof to my same daughter during her life, or until she shall marry or become a sister in any religious sisterhood (which shall first happen), and if my same daughter shall marry then in trust for her absolutely, and if my same daughter shall become a sister in any religious sisterhood, then my trustees may out of the income of her share make such allowance (if any) for her maintenance as they shall

Recital of testator's fear that some of his daughters may join a sisterhood.

Direction that the shares of daughters shall be held in trust to pay income, &c., to daughter until she marries or becomes a sister.

On marriage to be hers absolutely, but if she becomes

CODICIL AS TO SHARE OF DAUGHTER BECOMING A RELIGIOUS SISTER.

think fit, and subject thereto shall hold the said share, In trust for my other children, who being a son or sons, shall attain the age of twenty-one years, or being a daughter or daughters, shall attain that age or marry under that age, in equal shares if more than one, and if my same daughter shall die without having been married, or become a sister as aforesaid, then in trust for such person or persons, and in such manner as she shall by her will appoint, and in default of such appointment, and so far as any such appointment shall not extend, In trust for my other children who, &c. (*as before*): And I declare that every or any share accruing to a daughter of mine under this codicil, shall be subject to the like trusts as are hereinbefore declared concerning her original share: And I declare that by the word "sisterhood" as above used, I mean Roman Catholic as well as Protestant Institutions or Associations, but any daughter of mine becoming an associate of any such institution shall not be considered as becoming a sister, unless the becoming an associate involves the surrender or a pledge to surrender any part of her property.

a sister, share to go over, except as to allowance for maintenance.

Meaning of "sisterhood."

In witness, &c.

No. XXXII.

CODICIL AS TO LAND GIVEN TO A CHARITY BY DEED.

CODICIL *by a* Testator *who has conveyed* Land *by deed for a* Charitable Purpose *to provide for the event of the deed becoming* void *by his death within twelve months.*

Recite conveyance by deed of land for a charitable purpose.

THIS IS A CODICIL, &c. (*supra*): Whereas by an indenture dated, &c., and made, &c., and which is intended to be enrolled in the Central Office of the Supreme Court of Judicature, pursuant to the Mortmain and Charitable Uses Act, 1888, I have conveyed a piece of land, situate at, &c., therein described, unto and to the use of —— (*trustees*), upon certain trusts therein declared, for the erecting thereon of, &c. (*state charitable uses*

CODICIL AS TO LAND GIVEN TO A CHARITY BY DEED.

shortly): And whereas I am advised that the said conveyance will be void if I die within twelve calendar months after the date thereof: Now I hereby devise the said piece of land in the event of my death within twelve calendar months from the date of the said indenture unto and to the use of the said (*trustees of the charity*), Upon the trusts declared concerning the same by the said indenture, to the intent that those trusts may take effect as if the said conveyance had been valid (*a*).

That deed will be void if testator dies within twelve months.

Devise of land in that event to C. D.

In witness, &c.

(*a*) Under the Mortmain and Charitable Uses Act, 1891, this devise is valid, but the land must be sold unless the Court or the Charity Commissioners are satisfied that it is required for actual occupation for the purpose of the charity, in which case its retention may be sanctioned.

DISCLAIMERS.

No. I.

BY ONE OF SEVERAL TRUSTEES OF A WILL.

DISCLAIMER *of the Trusteeship of a* WILL *by* ONE *of several* TRUSTEES (*a*).

Recite will and appointment of executors.

TO ALL TO WHOM these presents shall come, A. B. of, &c. (*disclaiming party*), sends greeting: WHEREAS G. H., late of, &c., Esq., deceased, died on the —— day of ——, 18—, having by his will, dated the —— day of ——, devised and bequeathed all his real and personal estate unto the said A. B. and C. D., upon the trusts and with and subject to the powers and provisions therein declared and contained concerning the same: NOW THESE PRESENTS WITNESS that he the said A. B. hereby disclaims the office of trustee under the said will, and all real and personal estate whatever devised and bequeathed to him as a trustee by the said will (*b*).

Disclaimer by trustee.

IN WITNESS, &c.

No. II.

BY TRUSTEE.

DISCLAIMER *by* TRUSTEE (*short form*).

KNOW ALL MEN BY THESE PRESENTS, that I, A. B. of, &c. (*disclaiming party*), hereby disclaim the office of trustee under the will of G. H., late of, &c. (who died on the —— day of ——, 18—), and all estates and powers thereby expressed to be given to or vested in me as a trustee.

IN WITNESS, &c.

(*a*) Under 33 & 34 Vict. c. 97, a disclaimer deed not being expressly mentioned in the schedule thereto, is liable to a 10*s.* stamp duty.

(*b*) The trustee should simply disclaim, and not profess to convey the property limited to him in trust. See Nicloson *v.* Wordsworth, 2 Swanst. 365.

No. III.

DISCLAIMER *by the* TRUSTEE *of a* SETTLEMENT.

OF THE TRUSTS OF A SETTLEMENT.

TO ALL TO WHOM these presents shall come, A. B. of, &c. (*the disclaiming party*), sends greeting: WHEREAS by an indenture, &c. (*date and parties*), certain messuages, lands, and hereditaments situate, &c., were conveyed by the said C. D. unto and to the use of the said A. B. and G. H., their heirs and assigns for ever, upon the trusts therein declared concerning the same [*or* were settled to the use of X. Y. for her life with remainders over, and the said A. B. and G. H. were constituted the trustees of the indenture and powers of sale and exchange, and divers other powers and trusts were conferred on the said A. B. and G. H. as such trustees]: AND WHEREAS the said A. B. hath not executed the said indenture, nor in any manner acted as a trustee thereof: NOW THESE PRESENTS WITNESS that the said A. B. hereby disclaims and renounces the office of trustee of the said indenture, and all estate and interest in the hereditaments thereby conveyed [*or* settled], and all powers (*c*) and trusts created by the said indenture, and thereby made exerciseable by the said A. B. and G. H. as the trustees thereof.

Recite settlement appointing disclaiming trustee one of the trustees.

Disclaimer by trustee.

IN WITNESS, &c.

No. IV.

DISCLAIMER *of the Trusts of a* SETTLEMENT (*to be written at the foot of the Settlement—a short form*).

OF THE TRUSTS OF A SETTLEMENT.

KNOW ALL MEN BY THESE PRESENTS, that I, A. B. of, &c. (who am named as a party to and trustee of the above written indenture), hereby DECLARE that I have not accepted the trusteeship nor acted in any manner as a trustee thereof; AND I DISCLAIM the said trusteeship and all estates, interests and powers by the said indenture expressed to be vested in me.

Disclaimer by trustee.

IN WITNESS, &c.

(*c*) Under the Conveyancing Act, 1882, sect. 6, one of several trustees may disclaim powers simply collateral, in which case the powers will be exerciseable by the others or other of them.

APPOINTMENTS OF NEW TRUSTEES (*a*).

No. I.

OF SETTLEMENT IN THE PLACE OF DECEASED AND RETIRING TRUSTEES.

APPOINTMENT *by* SUPPLEMENTAL *or* INDORSED DEED *of* TWO NEW TRUSTEES *of a* SETTLEMENT *of* PERSONALTY *in the place of a* DECEASED TRUSTEE *and of a* RETIRING TRUSTEE *respectively; where the* TRUST FUNDS *consist of* STOCK *and* MONEY INVESTED *on* MORTGAGE *of* REAL ESTATE *and* RAILWAY STOCK.

(A.) *By supplemental deed.*

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c., and C. his wife (*settlor and wife*), of the first part; G. H. of, &c. (*retiring trustee*), of the second part; and L. M. of, &c., and N. O. of, &c. (*new trustees*), of the third part: and

Description of principal indenture.

supplemental (*b*) to an indenture (hereinafter called "the principal indenture") dated the —— day of ——, 18—, and made between the said A. B., of the first part, the said C. B., then C. D., of the second part, and E. F., the said G. H. and I. K., of the third part, being a settlement made on the marriage of the said A. B. and C. his wife of a sum of £—— consolidated £3 per

Stamps on deeds to appoint new trustees.

(*a*) See pp. 202—207, *supra*.

By the Stamp Act, 1891, an appointment of a new trustee is made liable to a stamp duty of 10*s*. And sect. 60 provides that every instrument and every decree or order of any Court or of any commissioners whereby any property on any occasion, except a sale or mortgage, is transferred to or vested in any person, is chargeable with duty as a conveyance or transfer of property, subject to a proviso that a conveyance or transfer made for effectuating the appointment of a new trustee is not to be charged with any higher duty than 10*s*. It has been held that if an instrument contains an appointment of a new trustee, and also a conveyance of the trust property, it requires two stamps of 10*s*. each. Hadgett *v*. Inland Revenue Commissioners, 3 Ex. D. 46.

(*b*) The practice of making an appointment of new trustees by supplemental deed is now generally adopted.

cent. annuities, of which settlement the said E. F., G. H., and I. K. were the trustees: WHEREAS the said I. K. died on the —— day of ——: AND WHEREAS the said G. H. is desirous of being discharged from the trusts of the principal indenture, as he doth hereby declare: AND WHEREAS the sum of £—— consolidated £3 per cent. annuities, part of the stock settled by the principal indenture, was some time since sold by the trustees, and the money produced by such sale was invested as to £——, part thereof on mortgage of hereditaments situate at ——, which mortgage was effected by an indenture dated, &c. (*date and parties*), and as to the residue thereof, in the purchase of £—— preference stock of the —— Railway Company: NOW THIS INDENTURE WITNESSETH, that the said A. B. and C. his wife, in exercise of the power for this purpose conferred by the Conveyancing and Law of Property Act, 1881 [*or*, contained in the principal indenture], and of all other powers (if any) them hereunto enabling, hereby appoint the said L. M. and N. O. to be trustees of the principal indenture in the place of the said I. K. deceased, and G. H. respectively, and direct that the said trust funds shall be forthwith transferred (*c*), so as to vest in the said E. F., L. M., and N. O., as joint tenants, to be held by them upon the trusts now affecting the same under the principal indenture.

OF SETTLEMENT IN THE PLACE OF DECEASED AND RETIRING TRUSTEES.

Recitals of death of one trustee, and that another desires to be discharged.

State of trust funds.

Appointment of new trustees, and direction that trust funds shall be transferred accordingly.

IN WITNESS, &c.

(B.) *By deed indorsed on the settlement.*

By indorsement.

THIS INDENTURE, made the —— day of ——, 18—, BETWEEN the within named A. B. and C. his wife, formerly C. D. (*settlor and wife*), of the first part; the within named G. H. (*retiring trustee*), of the second part; and L. M. of, &c., and N. O. of, &c. (*new trustees*), of the third part: WHEREAS the within-named I. K. died on the —— day of ——, 18—, leaving the within named E. F. and the said G. H. his co-trustees him

(*c*) It will be observed, that in this case the trust funds, being stock in the funds, railway stock, and a mortgage, cannot be made to vest in the new trustees by a declaration under sect. 34 of the Conveyancing Act, 1881, but must be separately transferred. For the proper form of a transfer of mortgage on a change of one of several trustees, see Vol I., "Mortgages."

OF SETTLEMENT IN THE PLACE OF DECEASED AND RETIRING TRUSTEES.

surviving: And whereas the said G. H. is desirous of being discharged from the trusts of the within written indenture as he doth hereby declare: (*The rest to be the same as* (A.), *substituting* "the within written indenture" *for* "the principal indenture").

No. II.

OF SETTLEMENT OF REVERSIONARY PROPERTY.

APPOINTMENT *by* Supplemental *or* Indorsed Deed *of* New Trustees *of a* Settlement *of* reversionary Property *in the place of a* Deceased *and a* Retiring Trustee.

(A.)

Parties.

THIS INDENTURE, made, &c. (*date and parties as in Precedent No. I.*), and supplemental to an indenture (hereinafter

Description of principal indenture.

called "the principal indenture"), dated, &c., and made, &c. (*as in Precedent No. I.*), being a settlement made on the marriage of the said A. B. and C. his wife, of the reversionary share of the said C. B. expectant on the decease of her father and mother —— and ——, in certain trust funds therein mentioned or referred to, and a policy of assurance on the life of the said A. B. for the sum of £——, effected with the —— Assurance Society, and the moneys thereby assured, and of which settlement the said E. F., G. H., and I. K., were the trustees: Whereas, &c. (*death of I. K., and that G. H. is desirous of retiring, as in Precedent No. I.*):

Witnessing part. Appointment of new trustees, and vesting declaration.

NOW, &c. (*Appointment of new trustees, as in Precedent No. I., omitting the direction to transfer the trust funds*): And the said A. B. and C. his wife hereby declare that the right to recover and receive the said reversionary share and policy moneys settled by the principal indenture shall henceforth vest in the said E. F., L. M., and N. O., as joint tenants upon the trusts affecting the same under the said indenture.

In witness, &c.

(B.)

OF SETTLEMENT OF REVERSIONARY PROPERTY.

By indorsement.

Vesting declaration.

THIS INDENTURE, made, &c. (*date and parties, recitals of death of I. K. and that G. H. is desirous of retiring, as in Precedent No. I.* (B.)). NOW THIS INDENTURE WITNESSETH, that, &c. (*Appointment of new trustees, as in Precedent No. I.* (B.), *omitting the direction to transfer trust funds*): AND the said A. B. and C. his wife hereby declare that the right to recover and receive the reversionary share of trust funds and policy moneys settled by the within-written indenture shall henceforth vest in the said E. F., L. M., and N. O., as joint tenants upon the trusts affecting the same under the within written indenture.

IN WITNESS, &c.

No. III.

APPOINTMENT *of* ONE NEW TRUSTEE *in the place of* TWO DECEASED TRUSTEES (*a*) *of a* SETTLEMENT *including* PERSONALTY *in* POSSESSION *and* REVERSION.

OF SETTLEMENT OF PERSONALTY IN POSSESSION AND REVERSION.

THIS INDENTURE, made the —— day of ——, 18—, BETWEEN A. B. of, &c., and C. his wife (*settlor and wife*), of the one part, and L. M. of, &c. (*new trustee*), of the other part, and supplemental to an indenture (hereinafter called "the principal indenture"), dated, &c., and made, &c., being a settlement made on the marriage of the said A. B. and C. his wife, of which settlement the said E. F., G. H., and I. K. were the trustees: WHEREAS, &c. (*deaths of E. F. and I. K.*): AND WHEREAS there have been several changes of investment of the moneys and property settled by the principal indenture, and additions have been made thereto under an agreement for settling after-acquired property contained in the principal indenture, and the trust

Parties.

Description of principal indenture.

Recital of deaths of trustees and of present state of trust funds.

(*a*) Upon an appointment of new trustees, the original number may be increased or reduced, provided that there are at least two. See Conveyancing Act, 1881, s. 31.

OF SETTLEMENT OF PERSONALTY IN POSSESSION AND REVERSION.

property now consists of the particulars mentioned in the schedule to these presents (*b*): NOW THIS INDENTURE WITNESSETH, that the said A. B. and C. his wife, in exercise of the power for this purpose conferred by the Conveyancing and Law of Property Act, 1881 [*or*, contained in the principal indenture], and of all other powers (if any) them hereunto enabling, hereby appoint the said L. M. to be a trustee of the principal indenture in the place of the said E. F. and I. K. both deceased, and jointly with the said G. H.: AND the said A. B. and C. his wife hereby direct and declare that the trust funds comprised in the first part of the schedule hereto shall be forthwith transferred so as to become vested in the said G. H. and L. M., and that the right to recover and receive the moneys and things in action comprised in the second part of the said schedule, and also all moneys and things in action (if any) which may hereafter become subject to the trusts of the principal indenture under the agreement therein contained for settling after-acquired property of the said C. B., shall forthwith vest in the said G. H. and L. M., and as to all the said premises as joint tenants upon the trusts now affecting the same under the said indenture.

Witnessing part.

Appointment of new trustee.

Direction for transfer of part of trust funds and vesting declaration as to other part.

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

PART I.

1. A sum of £—— secured on mortgage of real estate at —— by an indenture dated, &c., and made, &c.

2. £—— East India £4 per cent. stock standing in the names of ——.

3. £—— Consolidated £2 : 15*s.* stock standing in the names of ——.

(*b*) Before new trustees accept the office, they should require to be furnished with an account showing the dealings with the trust funds up to the time of their appointment, and should satisfy themselves that the funds originally settled are duly represented by those proposed to be transferred to them. But it is not usual to state in detail on the face of the deed of appointment all the intermediate changes of investment where they have been numerous, although under some circumstances it may be convenient to do so. See Precedent No. VIII., *infra*.

PART II.

OF SETTLEMENT OF PERSONALTY IN POSSESSION AND REVERSION.

4. A sum of £—— in and by the principal indenture covenanted to be paid by the said W. B. to the trustees.

5. The reversionary share of the said C. B. expectant on the decease of her father and mother, X. D. and G. D., in certain trust funds mentioned or referred to in the principal indenture.

6. A yearly sum of £—— by the principal indenture covenanted to be paid by the said X. D. to the trustees for the period therein mentioned.

7. A policy of assurance on the life of the said A. B. for the sum of £—— effected with the —— Assurance Society, dated, &c., and numbered ——.

N.B.—The above-mentioned East India Stock represents a sum of £——, to which the said C. B. became entitled under the will of her aunt, O. B., deceased, and which became subject to the trusts of the principal indenture, under the agreement for settling after-acquired property therein contained. The rest of the above-mentioned trust funds and property are or represent property originally settled.

(*The above Precedent can be easily converted into an indorsed deed by reference to Precedent No. I.* (B.).)

No. IV.

APPOINTMENT *of* NEW TRUSTEES *of a* SETTLEMENT, *where there has been a* PREVIOUS APPOINTMENT, *or* SEVERAL PREVIOUS APPOINTMENTS.

OF NEW TRUSTEES, WHERE THERE HAVE BEEN PREVIOUS APPOINTMENTS.

THIS INDENTURE, made the —— day of ——, 18—, Parties.
BETWEEN A. B. of, &c., and C., his wife (*settlor and wife*), of the first part, L. M. of, &c. (*retiring trustee*), of the second part, and P. Q. of, &c., and R. S. of, &c. (*new trustees*), of the third part, and supplemental, &c: WHEREAS by an indenture, dated, &c., and made, &c. (*date and parties*), the said L. M. and N. O. Recital of previous appointment,

OF NEW TRUSTEES, WHERE THERE HAVE BEEN PREVIOUS APPOINTMENTS.

or several previous appointments.

were appointed to be trustees of the principal indenture in the place of the said I. K., deceased, and of the said G. H., who was desirous of being discharged from the trusts thereof [*or, if there have been several previous appointments*, AND WHEREAS new trustees of the principal indenture have been appointed from time to time, and after the last appointment, which was made by an indenture, dated, &c. (*date and parties*), E. F., L. M., and N. O. were the trustees]: AND WHEREAS, &c. (*Recite death of N. O., and that L. M. is desirous of being discharged, and state of trust funds*): Now, &c. (*Appointment of P. Q. and R. S. to be new trustees, and direction and declaration for transfer of trust funds, and for vesting things in action, as in one of former precedents.*)

IN WITNESS, &c.

No. V.

OF CONVEYANCE IN TRUST FOR SALE.

APPOINTMENT *of* NEW TRUSTEES *of a deed of* CONVEYANCE *of* LAND *in trust for* SALE *accompanying a Settlement.*

Parties.

THIS INDENTURE, made the —— day of ——, 18—, BETWEEN A. B. of, &c., and C. his wife, of the one part, and L. M. of, &c., and N. O. of, &c. (*new trustees*), of the other part, and supplemental to an indenture (hereinafter called "the principal indenture"), dated, &c., and made, &c. (*date and parties*), whereby in consideration of the marriage then intended, and shortly afterwards solemnized between the said A. B. and C. his wife, a messuage or dwelling-house known as ——, situate in, &c. [*or* certain lands and hereditaments situate at, &c., therein particularly described], was [*or* were] conveyed unto and to the use of the said E. F., G. H., and I. K., their heirs and assigns, upon the trusts therein declared concerning the same: WHEREAS (*recite deaths of G. H. and I. K.*): NOW THIS INDENTURE WITNESSETH, that the said A. B. and C. his wife, in exercise, &c., hereby appoint the said L. M. and N. O. to be trustees of the principal indenture in the place

Appointment of new trustees and declaration that land shall vest in continuing trustee and

of the said G. H. and I. K. deceased, and jointly with the said E. F. for all the purposes for which the said E. F., G. H., and I. K. were appointed trustees by the said indenture: AND the said A. B. and C. his wife hereby declare that the lands and hereditaments comprised in the principal indenture shall forthwith and without any conveyance vest in the said E. F., L. M., and N. O. as joint tenants in fee simple, upon the trusts affecting the same under the said indenture.

OF CONVEYANCE IN TRUST FOR SALE.

new trustees jointly.

IN WITNESS, &c.

No. VI.

APPOINTMENT *of* NEW TRUSTEES *of a* MORTGAGE DEBT *forming part of the property originally settled, and which had been* TRANSFERRED *to the* TRUSTEES *by a* DEED *of even date with the* SETTLEMENT.

OF A MORTGAGE DEBT.

THIS INDENTURE, made the —— day of ——, 18—, BETWEEN A. B. of, &c., and C. his wife (*appointors*), of the first part, E. F. of, &c. (*continuing trustee*), of the second part, and L. M. of, &c., and N. O. of, &c. (*new trustees*), of the third part: WHEREAS these presents are supplemental to (1) an indenture, dated, &c., and made, &c. (*date and parties*), whereby certain lands and hereditaments, situate in, &c., were conveyed unto and to the use of the said A. B. in fee simple, by way of mortgage to secure payment of the sum of £——, with interest thereon, and (2) an indenture, dated, &c., and made, &c. (*date and parties*), whereby in consideration of the marriage then intended, and shortly afterwards solemnized between the said A. B. and C. B., the said mortgage was transferred by the said A. B. unto the said E. F., G. H., and I. K. upon the trusts therein mentioned or referred to: AND WHEREAS the said G. H. died on the —— day of ——, 18—; and the said I. K. died on the —— day of ——, 18—: NOW THIS INDENTURE WITNESSETH, that the said A. B. and C. his wife, in exercise, &c. hereby appoint the said L. M. and N. O. to be trustees of

Parties.

Description of principal deeds.

Deaths of trustees.

Appointment of new trustees.

OF A MORTGAGE DEBT.

the said indenture of the —— day of ——, 18—, in the place of the said G. H. and I. K., and jointly with the said E. F.: AND THIS INDENTURE ALSO WITNESSETH, that in consideration of the premises the said E F., as mortgagee, hereby assigns unto the said E. F., L. M., and N. O., the principal sum of £——, secured by the said indenture of mortgage, and all interest due and to become due thereon, and the benefit of all securities for the same, To HOLD the same unto the said E. F., L. M., and N. O., upon the trusts declared or referred to concerning the same in and by the said indenture of the —— day of ——, 18—: AND THIS INDENTURE ALSO WITNESSETH, that in consideration of the premises the said E. F., as mortgagee, hereby conveys unto the said E. F., L. M., and N. O., the lands and hereditaments comprised in the said indenture of mortgage, To HOLD the same unto and to the use of the said E. F., L. M., and N. O., in fee simple, subject to such right or equity of redemption as is now subsisting therein under the said indenture of mortgage.

Transfer of mortgage debt to new trustees jointly with continuing trustee.

Conveyance of mortgaged lands to trustees,

subject to right of redemption.

IN WITNESS, &c.

No. VII.

OF A SETTLEMENT WHERE CHILDREN'S SHARES HAVE BEEN DEALT WITH.

APPOINTMENT *by a* WIDOW *of* NEW TRUSTEES *of her* MARRIAGE SETTLEMENT, *comprising* PERSONAL ESTATE *of* VARIOUS KINDS, *where the shares of some of the children have been dealt with in various ways* (*a*).

Parties.

THIS INDENTURE, made the —— day of ——, 18—, BETWEEN C. B. of, &c., widow (*appointor*), of the first part, G. H. of, &c. (*retiring trustee*), of the second part, and L. M. of, &c., and N. O. of, &c. (*new trustees*), of the third part, and supple-

(*a*) It sometimes happens that when new trustees are appointed there have been dealings by the *cestuis que trust* with their beneficial interests in the trust funds, of which dealings the retiring trustees have notice. When this is the case, the new trustees ought to be informed of such dealings, and the most convenient mode of giving the information is to notice them in the deed, as is done in the above precedent.

OF A SETTLEMENT WHERE CHILDREN'S SHARES HAVE BEEN DEALT WITH.

mental, &c. (*describe settlement as in Precedent No. III.*): WHEREAS the said A. B. died on the —— of ——, 18—, leaving several children of the said marriage: AND WHEREAS, &c. (*recite death of I. K., and that G. H. is desirous of being discharged*): AND WHEREAS there have been divers changes of investment of and dealings with the trust funds and property settled by the principal indenture, and additions have been made thereto under the agreement for settling after-acquired property of the said A. B., contained in the said indenture, and moneys have been from time to time raised thereout for the advancement and benefit of children under a power for that purpose contained in the said indenture: AND WHEREAS in the first schedule to these presents are set forth the particulars, 1st, of the trust funds and property originally settled by the principal indenture; 2ndly, of the changes of investment and dealings with the trust funds, and of the additions thereto, and the moneys raised thereout; and 3rdly, of the trust funds and property now subject to the trusts of the principal indenture: AND WHEREAS several appointments have been made of the trust funds to or in favour of children of the said marriage, under a power in that behalf contained in the principal indenture, and some of the reversionary shares therein have been assigned or otherwise dealt with, and the deeds by which appointments have been made and shares have been assigned and dealt with are mentioned in the second schedule to these presents: NOW THIS INDENTURE WITNESSETH, that, the said C. B., in exercise of, &c., hereby appoints, &c. (*Appointment of L. M. and N. O. to be new trustees, supra*, p. 647): AND as regards the property subject to the trusts of the principal indenture of settlement, the said C. B. declares and directs that the right to recover and receive such part thereof as consists of debts or things in action within the meaning of section 34 of the Conveyancing and Law of Property Act, 1881, shall henceforth vest in the said E. F., L. M., and N. O., and that the residue of the said trust property shall be forthwith duly transferred so as to vest in them as joint tenants, upon the trusts now affecting the same respectively under the principal indenture and the several deeds mentioned in the second schedule hereto.

Death of husband leaving children.

Death of trustee, &c.

Changes of investment and additions to trust funds.

Contents of first schedule.

That appointments have been made in favour of children, and some of the shares have been dealt with.

Appointment of new trustees, and vesting declaration and direction for transfer of trust funds.

IN WITNESS, &c.

OF A SETTLEMENT WHERE CHILDREN'S SHARES HAVE BEEN DEALT WITH.

THE FIRST SCHEDULE ABOVE REFERRED TO.

(*The first part to state the particulars of the property originally settled; the second part to state the changes of investment and dealings with the trust funds, and the additions thereto, and the moneys raised for advancement, &c.; and the third part to state the particulars of the trust funds now subject to the trusts.*)

THE SECOND SCHEDULE ABOVE REFERRED TO.

(*Date*). DEED-POLL under the hands and seals of the said A. B., and C., his wife, being an appointment of part of the trust funds to their daughter P. B., in contemplation of her marriage.

(*Date*). INDENTURE between, &c. (*state parties*), whereby the share appointed by the above-mentioned deed was assigned to trustees.

(*Date*). DEED-POLL under the hands and seals of the said A. B., and C., his wife, being an appointment of the residue of the trust funds among their children.

(*Date*). INDENTURE between (*state parties*), being an assignment by Q. B., one of the sons of the said A. B., and C., his wife, to R. S. by way of mortgage.

No. VIII.

OF A STRICT SETTLEMENT IN THE PLACE OF RETIRING TRUSTEE.

APPOINTMENT *of a* NEW TRUSTEE *of a* STRICT SETTLEMENT *of* FREEHOLD PROPERTY.

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*appointor*), of the first part, E. F. of, &c. (*retiring trustee*), of the second part, and L. M. of, &c. (*new trustee*), of the third part, and supplemental to an indenture (hereinafter called "the principal indenture"), dated, &c., and made, &c.

OF A STRICT SETTLEMENT IN THE PLACE OF RETIRING TRUSTEE.

(*date and parties*), being a settlement of certain messuages, farms, lands, and hereditaments, situate in, &c., therein particularly described, under which settlement the said A. B. is tenant for life in possession: WHEREAS under a power of sale contained in the principal indenture parts of the freehold hereditaments thereby settled have been sold, and the moneys produced by such sale have been laid out in the purchase of other hereditaments which have been conveyed to the uses of the principal indenture by an indenture dated the —— day of ——, and made between (*parties*): AND WHEREAS the said E. F. is desirous as he hereby declares of being discharged from the trusts of the said indenture of settlement. NOW THIS INDENTURE WITNESSETH, that the said A. B., in exercise, &c., hereby appoints the said L. M. to be a trustee of the principal indenture in the place of the said E. F., and jointly with the said G. H. for all the purposes for which the said E. F. and G. H. were appointed trustees by the said indenture, and also for the purposes of the Settled Land Acts: [AND the said A. B. hereby declares that all the estate and interest of the said E. F. and G. H. in such of the messuages, lands, and hereditaments comprised in the principal indenture as remain unsold, and in the lands and hereditaments comprised in the said indenture of the —— day of —— respectively shall forthwith and without any conveyance vest in the said G. H. and L. M., as joint tenants upon the trusts affecting the same under the principal indenture (*a*).]

Sale of part of freeholds under a power, and purchase of other hereditaments.

Desire of one of trustees to be discharged.

Witnessing part.

Appointment of new trustee.

Declaration that estate of trustees in settled lands shall vest in continuing and new trustees jointly.

IN WITNESS, &c.

(*a*) If by the original settlement no estate is created to preserve contingent remainders, and the trustees take no other estate or interest in the freeholds, this declaration will be omitted.

No. IX.

OF SETTLEMENT OF FREEHOLDS, COPYHOLDS, AND LEASEHOLDS, AND MONEY REPRESENTING LAND.

APPOINTMENT *of* NEW TRUSTEES *of a* SETTLEMENT *of* REAL ESTATE *including* FREEHOLDS, COPYHOLDS, *and* LEASEHOLDS, *and* MONEY *liable to be laid out in the* PURCHASE *of* LAND.

Parties.

Description of principal deed.

THIS INDENTURE, made the —— day of ——, 18—, BETWEEN A. B. of, &c. (*appointor*), of the one part, and C. D. of, &c., and E. F. of, &c. (*new trustees*) of the other part, and supplemental to an indenture (hereinafter called "the principal indenture") being a settlement of divers freehold, copyhold, and leasehold hereditaments, situate in, &c., under which settlement the said A. B. is tenant for life in possession: WHEREAS

Surrender of copyholds to trustees, and their admissions.

the copyhold hereditaments comprised in the principal indenture were on the —— day of ——, duly surrendered to the use of the said G. H., I. K., and L. M., and their heirs, pursuant to the covenant on that behalf contained therein: AND the said G. H. and I. K. were on the same day admitted tenants to the said copyhold hereditaments upon such surrender: AND WHEREAS

Sales, exchanges, purchases, and investments.

divers sales, exchanges, purchases, and investments have been made from time to time under the powers of the principal indenture, or of the Settled Land Acts, 1882 to 1890: AND WHEREAS

That particulars of purchased hereditaments are in first schedule, and particulars of investments in second schedule.

the particulars of the hereditaments which have become subject to the uses of the principal indenture by purchase or exchange are shortly stated in the first schedule hereunder written: AND WHEREAS the money, stocks, funds, and securities mentioned in the second schedule hereunder written represent so much of the proceeds of the sales made as aforesaid as have not been laid out in the purchase of other hereditaments, or applied in the payments of costs and expenses: AND WHEREAS the said G. H. died on the —— day of ——, 18—, and the said I. K. died on the —— day of ——, 18—: NOW THIS INDENTURE WITNESSETH, that the said A. B., in exercise,

Appointment of new trustees.

&c., hereby appoints the said C. D. and E. F. to be trustees of the principal indenture in the place of the said G. H. and I. K. respectively and jointly with the said L. M. for all the purposes for which the said G. H., I. K., and L. M. were appointed

trustees by the said indenture, and also for the purposes of the Settled Land Acts: And the said A. B. hereby declares that the estate and interest of the said L. M. in all the freehold and leasehold lands and hereditaments subject to the uses and trusts of the principal indenture, shall forthwith and without any conveyance or assignment vest in the said C. D., E. F., and L. M. as joint tenants upon the trusts affecting the same respectively under the principal indenture: And the said A. B. hereby directs that the said L. M. as such surviving trustee as aforesaid shall at the cost of the trust estate make such surrender or surrenders of the copyhold lands and hereditaments now subject to the trusts of the said indenture, and such transfers of the stocks, funds, and securities mentioned in the second schedule hereto, as will vest the same respectively in the said C. D., E. F., and L. M. as joint tenants upon the trusts now affecting the said copyhold premises, stocks, funds, and securities respectively under the said indenture.

OF SETTLEMENT OF FREEHOLDS, COPYHOLDS, AND LEASEHOLDS, AND MONEY REPRESENTING LAND.

Declaration that freehold settled land shall vest in surviving and new trustees jointly.

Direction that copyhold lands and investments representing money arising from sales shall be surrendered and transferred to surviving and new trustees.

In witness, &c.

The First Schedule above referred to.

1. A freehold farm and lands called —— farm, situate in the parish of ——, containing —— or thereabouts, purchased from ——, which premises were conveyed to the uses of the said indenture of settlement by an indenture dated, &c., and made, &c. (*date and parties*).

2. A piece of freehold land containing —— or thereabouts situate in the parish of ——, purchased from ——, which premises were conveyed, &c. (*as above*).

3. A copyhold messuage or tenement held of the manor of ——, purchased from ——, to which premises the said G. H., I. K., and L. M. were admitted tenants on the —— day of ——, 18—.

4. A freehold piece of land situate, &c., and containing, &c., received in exchange from ——, under an order of exchange, dated the —— day of ——, 18—.

OF SETTLEMENT OF FREEHOLDS, COPYHOLDS, AND LEASEHOLDS, AND MONEY REPRESENTING LAND.

THE SECOND SCHEDULE ABOVE REFERRED TO.

1. THE sum of £—— £2 : 15*s.* per Cent. Consolidated Stock standing in the names of —— in the books of the Governor and Company of the Bank of England.

2. THE sum of £—— invested on mortgage of real estate situate at, &c.

3. THE sum of £—— Debenture Stock of the —— Railway Company.

4. THE sum of £—— cash at the —— Bank.

No. X.

SURRENDER TO AND ADMISSION OF NEW TRUSTEES.

SURRENDER *of* COPYHOLDS *to* NEW TRUSTEES, *and their* ADMISSION *pursuant to the last Precedent.*

The MANOR *of* ——, in the County of ——. } BE IT REMEMBERED that on this —— day of ——, 18—, L. M. of, &c. (*surviving trustee*), comes before ——, steward of the said manor out of Court, and in consideration of five shillings paid to him by C. D. of, &c., and E. F. of, &c. (*new trustees*), surrenders into the hands of the lord of the said manor by the hands and acceptance of his steward according to the custom thereof: ALL, &c. (*parcels*), To which hereditaments G. H. of, &c. (since deceased), I. K. of, &c. (since deceased), and the said L. M. were admitted tenants out of Court on the —— day of ——, 18—: TO THE USE of the said C. D., E. F., and L. M., and their heirs, at the will of the lord, according to the custom of the said manor, and by and under the rents, suits, and services therefor due and of right accustomed: NEVERTHELESS upon the trusts declared concerning the same by an indenture dated, &c., and made, &c. (*settlement*): AND BE IT ALSO REMEMBERED that on this —— day of ——, 18—, the above-named C. D., E. F., and L. M., come before the said steward out of Court, and pray to be admitted tenants to the

Surviving trustee surrenders copyholds,

to use of new trustees and surviving trustee, upon trusts of settlement.

Admittance of trustees accordingly.

copyhold hereditaments surrendered to their use as aforesaid: To which said C. D., E. F., and L. M., the lord of the said manor by his said steward grants seisin thereof by the rod: To HOLD the said copyhold hereditaments unto the said C. D., E. F., and L. M., and their heirs, at the will of the lord, according to the custom of the said manor, by and under the rents, suits, and services therefor due and of right accustomed: NEVERTHELESS upon the trusts above referred to: AND so (saving the right of the lord) the said C. D., E. F., and L. M. are admitted tenants thereof, and pay to the lord for a fine on such their admittance the sum of £——, and their fealty is respited.

SURRENDER TO AND ADMISSION OF NEW TRUSTEES.

No. XI.

APPOINTMENT *of* NEW TRUSTEES *of an* OLD SETTLEMENT *of* REAL ESTATE, *where there have been several* PRIOR APPOINTMENTS, *and where the property has been* DISENTAILED *and* RESETTLED, *keeping on foot the first Settlement.*

OF STRICT SETTLEMENT.

THIS INDENTURE, made the —— day of ——, 18—, BETWEEN A. B. of, &c. (*tenant for life*), of the one part, and C. D. of, &c., and E. F. of, &c. (*new trustees*) of the other part, and supplemental, &c. (*to settlement, as in Precedent No. IX*). WHEREAS the deeds mentioned in the first schedule hereunder written have been executed since the date of the principal indenture affecting the hereditaments thereby settled, and after the execution of the indenture dated the —— day of ——, 18—, mentioned in the said schedule (being the last appointment of new trustees), L. M., N. O., and P. Q. were the trustees of the principal indenture for all the purposes for which the said G. H., I. K., and L. M. were thereby appointed trustees: AND WHEREAS divers sales, exchanges, purchases, and investments have been made from time to time under the powers of the

Parties.

Recite execution of subsequent deeds affecting settled property.

Sales, exchanges, &c.

OF STRICT SETTLEMENT.

principal indenture, or of the Settled Land Acts: AND WHEREAS the particulars of the hereditaments which have become subject to the uses of the principal indenture by purchase or exchange are shortly stated or referred to in the second schedule hereunder written: AND WHEREAS the money, stocks, funds, and securities mentioned in the third schedule hereunder written, represent part of the moneys produced by sales as aforesaid, and are liable to be laid out in the purchase of hereditaments to be settled to the uses of the principal indenture: AND WHEREAS the said N. O. died on the —— day of ——, 18—, and the said P. Q. died on the —— day of ——, 18—: NOW THIS INDENTURE WITNESSETH, that the said A. B. in exercise, &c., hereby appoints the said C. D. and E. F. to be trustees of the principal indenture in the place of the said N. O. and P. Q., deceased, and jointly with the said L. M. for all the purposes for which the said G. H., I. K., and L. M., were appointed trustees by the said indenture, and also for the purposes of the Settled Land Acts: AND, &c. (*declaration that freeholds and leaseholds shall vest in new trustees, jointly with surviving trustee, and that copyhold lands and investments shall be surrendered and transferred to surviving and new trustees, as in Precedent No. IX.*, p. 659, *adding after* "under the said indenture," *the words* "and the several deeds mentioned in the first schedule hereto").

That particulars of property purchased, &c., are stated in schedule,

and also particulars of moneys, &c., liable to be laid out in purchase of land.

Deaths of two trustees.

Appointment of two new trustees.

Declarations as to vesting.

THE FIRST SCHEDULE ABOVE REFERRED TO.

(*Date.*) INDENTURE between, &c., being a deed charging the settled property with a jointure for ——, and portions for the younger children of ——.

(*Date.*) INDENTURE between, &c., being a deed appointing a new trustee.

(*Date.*) INDENTURE between, &c., being another deed appointing a new trustee.

(*Date.*) INDENTURE between, &c., being a disentailing deed.

(*Date.*) INDENTURE between, &c., being a deed of resettlement.

OF STRICT SETTLEMENT.

THE SECOND SCHEDULE ABOVE REFERRED TO.

1. DIVERS lands and hereditaments situate in the parishes of ——, and ——, the particulars of which are stated in the first schedule to the above-mentioned indenture, dated, &c. (*the first appointment of new trustees*).

2. DIVERS lands and hereditaments situate, &c., the particulars of which are stated in the first schedule to the above mentioned indenture, dated, &c. (*the second appointment of new trustees*).

3. A FREEHOLD farm and lands containing, &c., situate, &c., purchased from ——, and conveyed to the uses of the said indenture of settlement by an indenture, dated, &c., and made, &c.

THE THIRD SCHEDULE ABOVE REFERRED TO.

(*Same as Second Schedule to Precedent No. IX.*, p. 660.)

No. XII.

OF NEW TRUSTEE OF TERM.

APPOINTMENT *by* TENANT FOR LIFE *of a* NEW TRUSTEE *of a* TERM OF YEARS (*a*) *created by a* SETTLEMENT *of* REAL ESTATE, *by deed* INDORSED *or* WRITTEN *at the* FOOT *of the* SETTLEMENT.

THIS INDENTURE, made the —— day of ——, 18—, BETWEEN the within [*or* above] named A. B. (*appointor*), of the one part, and C. D. of, &c. (*new trustee*), of the other part: WITNESSETH that in consequence of the death of the within [*or* above] named G. H. (which event happened on the —— day of ——, 18—), the said A. B., in exercise of the power for

Parties.

Appointment of new trustee of term, and declaration that term shall

(*a*) It is supposed in this case that by the settlement different trustees are appointed for the term of years to those appointed for general purposes.

OF NEW TRUSTEE OF TERM.

vest in surviving and new trustee.

this purpose, &c., hereby appoints the said C. D. to be a trustee of the term of —— years created by the said indenture of settlement in the place of the said G. H. deceased, and jointly with the within-named E. F., and declares that all the lands and hereditaments comprised in and subject to the uses of the said indenture, shall forthwith and without any assignment vest in the said C. D. and E. F. as joint tenants for the residue of the said term of —— years upon the trusts now affecting the same under the said indenture.

In witness, &c.

No. XIII.

OF ONE TRUSTEE IN PLACE OF TWO.

APPOINTMENT *by a* Surviving Trustee *of one* New Trustee *of* Freeholds *held upon a trust for sale in the place of* Two Deceased Trustees *where Three were originally appointed* (*by indorsement*).

Parties.

THIS INDENTURE, made the —— day of ——, 18—, Between the within-named A. B. (*surviving trustee*), of the one part, and C. D. of, &c. (*new trustee*), of the other part: WITNESSETH, that in consequence of the deaths of the within-named E. F. and G. H., which events happened on the —— day of —— 18—, and the —— day of ——, 18—, respectively, the said A. B., in exercise, &c., hereby appoints the said C. D. to be a trustee of the within-written indenture in the place of the said E. F. and G. H. deceased, and jointly with him the said A. B. for all the purposes for which the said A. B., E. F., and G. H. were appointed trustees by the said indenture: AND THIS INDENTURE ALSO WITNESSETH, that in consequence of the foregoing appointment, and to give full effect thereto, the said A. B. as trustee hereby conveys (*a*) unto the said A. B.

Appointment of one new trustee in place of two.

Conveyance of lands to new trustees.

(*a*) In this case the surviving trustee, being the appointor, may as well convey the legal estate as make a vesting declaration under s. 34 of the Act.

and C. D. all the lands, tenements, and hereditaments comprised in the within-written indenture: To HOLD the same unto and to the use of the said A. B. and C. D. as joint tenants in fee simple, UPON the trusts affecting the same under the said indenture.

OF ONE TRUSTEE IN PLACE OF TWO.

IN WITNESS, &c.

No. XIV.

APPOINTMENT *of* NEW TRUSTEES *of a* WILL, *a* SEPARATE TRUSTEE *being* APPOINTED *for each of* TWO DISTINCT FUNDS (*b*).

OF SEPARATE TRUSTEES FOR DISTINCT FUNDS.

THIS INDENTURE, made the —— day of ——, 18—, BETWEEN A. B. of, &c. (*surviving trustee of will*), of the first part, C. D. of, &c. (*new trustee of one fund*), of the second part, and E. F. of, &c. (*new trustee of the other fund*), of the third part. (*Recite will, giving two legacies of* £5,000 *each upon trusts for two daughters, L. H. and M. H., and their children respectively, and state what investments represent each legacy, and death of one trustee, X. Y., leaving A. B. the surviving trustee*): NOW THIS INDENTURE WITNESSETH, that the said A. B., in exercise of the power for this purpose conferred by the Conveyancing Acts, 1881, 1882, and 1892, and of all other powers (if any) him hereunto enabling, hereby appoints the said C. D. to be a trustee of the said will in the place of the said X. Y. deceased, and jointly with him the said A. B., so far as regards the said trust legacy of £5,000, by the said will directed to be held on trust for the said L. H. and her children as aforesaid, and the investments representing the same, and the said E. F. to be a trustee of the said will in the place of the said X. Y. deceased, and jointly with him the said A. B., so far as regards the said trust legacy of £5,000 by the said will directed to be held in trust for the said M. H. and her children as aforesaid, and the investments representing the same (*c*).

Parties.

Recitals.

Appointment of one trustee for one fund, and another trustee for the other fund.

IN WITNESS, &c.

(*b*) See Conveyancing Act, 1882, s. 5.

(*c*) It is assumed that the investments will be transferred by separate instruments.

No. XV.

OF NEW TRUSTEES OF A SHARE UNDER A WILL.

APPOINTMENT *of* NEW TRUSTEES *of a* SHARE *of the* RESIDUARY ESTATE *under a* WILL *in the place of* TRUSTEES *who* RETIRE *as regards that* SHARE *only* (*a*).

Parties. THIS INDENTURE, made the —— day of ——, 18—, BETWEEN A. B. of, &c., and C. D. of, &c. (*present trustees*), of the one part, and E. F. of, &c., and G. H. of, &c. (*new trustees*), of

Recital of will, the other part (*recite will by which the testator's residuary estate is given to A. B. and C. D. upon trusts for his children, with a direction that the daughters' shares shall be settled—death of testator leaving children, including daughters*): AND WHEREAS the share of

and particulars of daughters' share. I. K., one of the said daughters, in the residuary estate of the said testator is now represented by the following trust funds (namely) (*state particulars*): AND WHEREAS the said A. B. and

That trustees are desirous of retiring, and appointing new trustees as to share. C. D. are desirous of retiring from the trusteeship of the said will, and of appointing the said E. F. and G. H. to be trustees in their place, so far only as regards the said trust funds representing the share of the said I. K., and it is intended that the said trust funds shall be transferred to the said E. F. and G. H. as soon as conveniently can be after the execution of these

Witnessing part. presents: NOW THIS INDENTURE WITNESSETH, that the said A. B. and C. D., in exercise of the power for this purpose conferred by the Conveyancing Acts, 1881, 1882, and 1892, and of all other powers (if any) them hereunto enabling,

Retiring trustees appoint new trustees of daughters' share. do hereby appoint the said E. F. and G. H. to be trustees of the said will in the place of them, the said A. B. and C. D., so far only as regards the share of the said I. K. in the residuary estate of the said testator, and the trust funds representing the same.

IN WITNESS, &c.

(*a*) See Conveyancing Act, 1892, s. 6.

No. XVI.

DEED *to* DISCHARGE *a* TRUSTEE *wishing to* RETIRE *from the trusts of a* SETTLEMENT *comprising* LAND *and* PERSONAL ESTATE.

DISCHARGE OF TRUSTEE.

THIS INDENTURE, made the —— day of ——, 18—, BETWEEN A. B. of, &c., and C. D. of, &c. (*continuing trustees*), of the first part, E. F. of, &c. (*person empowered to appoint new trustees*), of the second part, and G. H. of, &c. (*retiring trustee*), of the third part, and supplemental to, &c.: WITNESSETH, that the said G. H. hereby declares that he is desirous of being discharged from the trusts of the principal indenture: AND the said A. B. and C. D., and also the said E. F., hereby consent to the discharge of the said G. H. from the said trusts, and to the vesting in the said A. B. and C. D. alone of the trust property: AND THIS INDENTURE ALSO WITNESSETH, that in consideration of the premises the said G. H. as trustee hereby releases (*a*) unto the said A. B. and C. D., All the lands, tenements, and hereditaments comprised in the said indenture of settlement: TO HOLD the same unto and to the use of the said A. B. and C. D. in fee simple, upon the trusts now affecting the same under the said indenture: AND the said G. H. hereby covenants with the said A. B. and C. D. that he the said G. H. will forthwith duly transfer the stocks, funds, and securities mentioned in the schedule hereto, and which now represent the stocks, funds, and securities settled by the said indenture so as to vest the same in the said A. B. and C. D. alone, to be held by them upon the trusts affecting the same under the said indenture.

Parties.

Discharge of trustee.

Retiring trustee releases lands to continuing trustees,

and agrees to transfer to them trust funds.

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

(*a*) See note to Precedent No. XIII.

No. XVII.

OF WILL IN PLACE OF DECEASED TRUSTEE.

APPOINTMENT *by* SURVIVING TRUSTEE *of a* NEW TRUSTEE *of a* WILL *of* REAL *and* PERSONAL *Estate—where the Estate has not been realized* (*a*).

Parties. THIS INDENTURE, made the —— day of ——, 18—, BETWEEN A. B. of, &c. (*surviving trustee*), of the one part, and

Recital of will. E. F. of, &c. (*new trustee*), of the other part: WHEREAS X. Y., late of, &c., deceased, duly made his will dated the —— day of ——, 18—, and thereby (after several devises and bequests) gave, devised, and bequeathed all his real and personal estate not thereby otherwise disposed of unto the said A. B. and C. D., of, &c., upon the trusts therein declared concerning the same: AND, &c. (*power to appoint new trustees, and appointment of A. B. and C. D. to be executors—death of testator, and probate of his will by both executors—death of C. D.*): AND WHEREAS the estate of the said testator has not been fully got in nor have all his debts been yet paid: NOW THIS INDENTURE WITNESSETH

Appointment of new trustee. that the said A. B., in exercise of the power for this purpose conferred by the Conveyancing and Law of Property Act, 1881, and of all other powers (if any) him hereunto enabling, hereby appoints the said E. F. to be a trustee of the said will in the place of the said C. D.: And the said E. F. hereby consents to be a trustee of the said will accordingly: AND

Conveyance of residuary real estate so as to vest in surviving and new trustees upon trusts of will. THIS INDENTURE ALSO WITNESSETH, that in consideration of the premises, the said A. B. as trustee hereby conveys unto the said A. B. and E. F., ALL the testator's real estate vested in the said A. B., as the surviving trustee of the said will: TO HOLD the same unto and to the use of the said A. B. and E. F., their heirs and assigns, UPON the trusts and with and subject to the powers and provisions by and in the said will declared and contained of and concerning the same: PROVIDED ALWAYS, and it is hereby declared, that these presents shall not operate as an assent by the said A. B. in his

Proviso that the rights and privileges of

(*a*) Where the particulars of the property have been ascertained and the debts, &c., paid, the next Precedent should be used.

character of executor to the aforesaid residuary bequest, nor prevent him from calling in the outstanding personal estate, or any part thereof, or applying the same in payment of debts or otherwise in a due course of administration, or from doing any other act or thing in his character of executor which he might have done if these presents had not been executed, but the position of all parties after the execution of these presents shall be the same in all respects as if the said E. F. had been named in the said will as a trustee (but not an executor) in the place of the said C. D., and these presents had not been executed.

OF WILL IN PLACE OF DECEASED TRUSTEE.

the surviving executor as such shall not be affected.

IN WITNESS, &c.

No. XVIII.

APPOINTMENT *by a* CONTINUING TRUSTEE *of a* NEW TRUSTEE *of a* WILL *of* REAL *and* PERSONAL *Estate in the place of a* DISCLAIMING TRUSTEE *where the Estate has been realized.*

OF A WILL IN PLACE OF DISCLAIMING TRUSTEE.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*continuing trustee*), of the one part, and E. F. of, &c. (*new trustee*), of the other part (*recite will as in last Precedent, death of testator, and probate by A. B. alone*): AND WHEREAS the said C. D. has by a deed poll under his hand and seal, dated the —— day of ——, disclaimed the office of trustee under the said will: AND WHEREAS the funeral and testamentary expenses of the said testator and his debts (so far as they have been ascertained) and the legacies given by his will have been paid and satisfied: AND WHEREAS the real and residuary personal estate of the said testator now consists of or is represented by the particulars mentioned and set forth in the schedule hereto: NOW THIS INDENTURE WITNESSETH, that, &c. (*Appointment of new trustee, as in last Precedent*): AND THIS INDENTURE ALSO WITNESSETH, that the said A. B. as trustee hereby conveys unto the said A. B. and E. F. ALL THE freehold hereditaments described in the first part

Parties.

Disclaimer of one of trustees.

That debts, &c., have been paid.

Particulars of estate.

Continuing trustee conveys freehold

OF A WILL IN PLACE OF DISCLAIMING TRUSTEE.

of the schedule hereto, AND all other (if any) the freehold hereditaments of or to which the said X. Y. was seised or entitled at the time of his decease, and which are now vested in the said A. B. as the continuing trustee of the same will (*a*): TO HOLD the same unto and to the use of the said A. B. and E. F. in fee simple: AND THIS INDENTURE ALSO WITNESSETH, that the said A. B. as trustee hereby assigns unto the said A. B. and E. F., first, ALL the leasehold hereditaments described in the second part of the schedule hereto, and all other (if any) the leasehold hereditaments of or to which the said testator X. Y. was possessed or entitled at the time of his decease, and which are now vested in the said A. B. as the continuing trustee of the same will: AND, secondly, all the furniture and other personal estate mentioned in the fourth part of the schedule hereto, and all other (if any) the personal estate of the said testator X. Y. now vested in the said A. B. as such continuing trustee as aforesaid (except the moneys, stocks, funds, and securities mentioned in the third part of the schedule hereto, which are intended to be transferred to the said A. B. and E. F. in the manner mentioned in that behalf in the said third part of the said schedule): TO HOLD the premises firstly hereinbefore assigned unto the said A. B. and E. F. for the several terms, estates, and interests now subsisting therein respectively: AND TO HOLD the premises secondly hereinbefore assigned unto the said A. B. and E. F. absolutely: AND it is hereby agreed and declared that the said A. B. and E. F. shall stand seised and possessed of all the said freehold and leasehold hereditaments and personal estate hereby conveyed and assigned respectively, and also the moneys, stocks, funds, and securities mentioned in the third part of the schedule hereto, and the rents, profits, and income thereof respectively, upon the trusts and with and subject to the powers and provisions by and in the said will declared and contained concerning the same respectively, or such of them as are now subsisting and capable of taking effect.

to use of continuing and new trustees.

Continuing trustee assigns leaseholds and other personal estate

unto continuing and new trustees.

Declaration of trust.

IN WITNESS, &c.

(*a*) If the testator died before 1st January, 1882, and the will contained a devise of trust and mortgage estates to the trustees, add here "other than and except any hereditaments which were vested in the said X. Y. as a trustee or mortgagee."

THE SCHEDULE ABOVE REFERRED TO.

The First Part.

A freehold farm and lands, called ——, situate in the parish of ——, containing —— or thereabouts, and in the occupation of ——.

The Second Part.

A leasehold farm and lands, called ——, situate in ——, held under a lease dated or for the term of —— years, computed from, &c.

The Third Part.

1. A sum of £——, £2 : 15*s.* per Cent. Consolidated Stock, standing in the name of the said testator.

2. A sum of £——, secured by a mortgage of real estate, situate at ——, which mortgage was made by an indenture dated, &c., and made, &c.

3. The sum of £—— debenture stock of the —— Railway Company, &c., &c.

It is intended that No. 1 shall be transferred into the names of the said A. B. and E. F., and that No. 2 and the security for the same shall be assigned unto the said A. B. and E. F. by an indenture already prepared and indorsed on the said indenture of mortgage, and that No. 3 shall be also forthwith transferred to them by a deed already prepared for that purpose.

The Fourth Part.

The furniture in and about, &c.

(*Other Particulars.*)

DISENTAILING ASSURANCES.

Powers of a tenant in tail in possession or remainder.

A TENANT in tail in possession of freehold land may, under the Fines and Recoveries Abolition Act (*a*), dispose of the fee simple or any less estate by a deed enrolled in the Central Office of the Supreme Court of Judicature (*b*); but if the estate tail is preceded by an estate for years determinable on the dropping of a life or lives, or any greater estate (not being an estate for years), created by the same settlement, the tenant in tail, unless he is also tenant in fee simple in remainder expectant on his own estate tail, cannot, without the consent of the person called by the Act "the protector of the settlement" (*c*), create any larger estate than a base fee, *i.e.*, an estate which will be a complete bar to the issue, but not to those in remainder or reversion, and during the continuance of such issue will devolve or be disposable of by him as a fee simple.

Enlargement of base fee.

A tenant in tail who has created a base fee may convert such base fee into a fee simple by another enrolled deed, so soon as there ceases to be a protector of the settlement (*d*), or during the protectorship with the protector's consent. And if the owner of a base fee becomes entitled to the immediate reversion in fee simple, the estate is enlarged *ipso facto* (*e*).

General rule as to the person who shall be protector.

The general rule laid down by the Act as to protectors is, that where there is a tenant in tail under a

(*a*) 3 & 4 Will. 4, c. 74, s. 15.

(*b*) By 42 & 43 Vict. c. 78, s. 5, various offices, including the Enrolment Office, are concentrated in and amalgamated with the Central Office. A tenant in tail may exercise the powers of sale, leasing, &c., conferred by the Settled Land Act, 1882, without having the deed enrolled.

(*c*) Sect. 34.

(*d*) Sect. 19.

(*e*) Sect. 39.

settlement, and there is subsisting under the *same* settlement any estate for years determinable on the dropping of a life or lives, or any greater estate (not being an estate for years), prior to the estate tail, then the owner of the prior estate, or the first of such prior estates, if more than one, then subsisting under the same settlement, or the person who would have been so if no absolute disposition thereof had been made (the first of such prior estates, if more than one, being for all the purposes of the Act deemed the prior estate), is the protector of the settlement, and is to be deemed the owner of such prior estate, although the prior estate may have been changed by the owner thereof, or by the settlor, or otherwise howsoever, and although the whole of the rents and profits be required for the payment of the charges thereon, and although such prior estate may have been absolutely disposed of by the owner thereof, or by or in consequence of the bankruptcy or insolvency of such owner, or by any other act or default of such owner, and that an estate by the curtesy in respect of the estate tail, or of any prior estate created by the same settlement, is to be deemed a prior estate under the same settlement, and that an estate by way of resulting use or trust, to or for the settlor, is also to be deemed an estate under the same settlement (*f*).

Power to settlor to appoint a protector.

The settlor may appoint any person, or number of persons, not exceeding three, to be protector or protectors in lieu of the person who would have been the protector if there had been no such appointment (*g*).

Office of protector survives, and if all appointed protectors die, tenant for life is protector.

If two or three protectors are appointed, the office passes to the survivors and survivor (*h*); and if all the protectors die, and the settlement contains no power to perpetuate the protectorship, or, there being such a power, it is not exercised, the tenant for life becomes protector (*i*).

(*f*) Sect. 22. The reader is referred to the fifteen following sections of the Act for further provisions respecting protectors.

(*g*) Sect. 32.

(*h*) Bell *v.* Holtby, L. R. 15 Eq. 178.

(*i*) Clarke *v.* Chamberlin, 16 C. D. 176.

Lunatic protector.

Where the protector is a lunatic, the Lord Chancellor, or other person for the time being intrusted with the care of lunatics, is the protector in the place of such lunatic (*j*).

Consent of protector, how given.

The consent of the protector must be given by the same assurance by which the disposition is effected, or by another deed executed on or before the day on which the assurance is made (*k*). And the protector cannot revoke his consent (*l*). If the consent is given by a distinct deed, it must be enrolled at or before the time when the assurance of the tenant in tail is enrolled (*m*).

Disposition by married women tenants in tail.

The Act provides that where the tenant in tail is a married woman, the concurrence of her husband shall be necessary, and the deed must be acknowledged by her (*n*); and in a recent case, Jessel, M. R., expressed an opinion (though it was unnecessary to decide the point) that such concurrence and acknowledgment are necessary, even when the wife is equitable tenant in tail for her separate use (*o*). Whether this view is correct or not, it has been decided that under the Married Women's Property Act, 1882, which makes a married woman competent to dispose of real or personal property as if she were a feme sole, a woman who has married or acquired an estate tail since the 31st December, 1882, can bar the entail without her husband's concurrence and by an unacknowledged deed (*p*). The acknowledgment of a married woman may be taken subsequently to the enrolment of the deed, and after the expiration of the six months limited for enrolment (*q*). Where a married woman is protector she may consent to a disposition by the tenant in tail as if she were a feme sole (*r*).

Married woman protector.

Legal entail in copyhold barred by surrender.

The powers of disposition given to tenants in tail are applicable to copyholds, except that the disposition in the case of an estate at law is to be made by

(*j*) Sect. 33.
(*k*) Sect. 42.
(*l*) Sect. 44.
(*m*) Sect. 46.
(*n*) Sect. 40.
(*o*) Cooper *v.* Macdonald, 7 C. D. 288.
(*p*) *In re* Drummond and Davie's Contract, (1891) 1 Ch. 524.
(*q*) *Ex parte* Taverner, 1 Jur. N. S. 1194.
(*r*) Sect. 45.

surrender, and, in the case of an equitable estate, by surrender, or deed entered on the court rolls of the manor, instead of being enrolled in the Central Office. The protector's consent to a disposition of copyholds may be by deed, to be produced to the lord of the manor at or before the time when the disentailing surrender is made, and then entered on the court rolls, or it may be given to the person taking the surrender, in which case the fact of the consent must be mentioned in the memorandum of surrender (*s*). A deed to bar an equitable entail of copyholds must be entered on the court rolls within six months after its execution (*t*).

Equitable entail by surrender or deed to be entered on court rolls within six months.

An estate tail in copyholds is barred by a deed of enfranchisement, the effect of an enfranchisement being to merge the copyhold estate in the freehold (*u*).

Effect of enfranchisement.

If a tenant in tail creates a voidable estate in favour of a purchaser for valuable consideration, and afterwards, under the Act, makes a disposition of the same lands, such disposition, whatever its object may be, has the effect of confirming the voidable estate to the extent to which the second deed is an effective disposition, except that if the second disposition is made to a *purchaser* for valuable consideration who has not *express notice* of the voidable estate, then the voidable estate is not confirmed as against such purchaser and the persons claiming under him (*x*).

A voidable estate by a tenant in tail in favour of a purchaser confirmed by a subsequent disposition of such tenant in tail under the Act, but not against a purchaser without notice.

Where a tenant in tail of lands becomes bankrupt, the trustee appointed in the bankruptcy is empowered to deal with the lands in the same manner as the bankrupt might have dealt with the same (*y*).

Disposition of lands of bankrupt tenant in tail.

Lands to be sold, where the money arising from the sale thereof is subject to be invested in the purchase of land to be settled so that any person, if the lands were purchased, would have an estate tail therein, and also money subject to be invested in the purchase of lands

Money subject to be invested in the purchase of lands to be entailed, may be disentailed.

(*s*) Sects. 51—54.
(*t*) Honywood *v.* Foster, 30 Beav. 1; Gibbons *v.* Snape, 32 *ib.* 130; Green *v.* Paterson, 32 C. D. 95.
(*u*) Challoner *v.* Marshall, 2 Ves. 524; *Ex parte* London School Board, 41 C. D. 547.
(*x*) Sect. 38.
(*y*) See 46 & 47 Vict. c. 52, s. 56; 3 & 4 Will. 4, c. 74, ss. 56—73.

to be settled, so that any person, if the lands were purchased, would have an estate tail therein, may be disentailed, and they are, for this purpose, considered subject to the same estates as the lands to be purchased would, if purchased, have been actually subject to; but where the property thus disentailed consists of leasehold lands for years, or of money, such leasehold lands or money are, as to the person in whose favour or for whose benefit the disentailing disposition is made, treated as personal estate (*z*).

Retrospective effect of enrolment.

Every deed required to be enrolled operates (when enrolled) from the time of its execution, except as against any person claiming for valuable consideration under any subsequent deed duly enrolled before the enrolment of the first deed (*a*).

Possession adverse to a tenant in tail runs against all whom he could have barred.

When the right of a tenant in tail to recover land has been barred by the Statute of Limitations, all persons claiming any estate, interest, or right which such tenant in tail might lawfully have barred, are barred also, and when time has begun to run against a tenant in tail, *it* continues to run after his death against all persons whom he might have barred (*b*).

An assurance by a tenant in tail, which is ineffectual to bar the remainders, if followed by possession confers a good title against the remaindermen at the end of twelve years from the time when the assurance, if then executed, would have barred them.

If a tenant in tail makes an assurance, which is not effectual to bar the remainders over, and the person claiming by virtue of such assurance enters into possession or receipt of the profits, the remaindermen are barred (under the new Act) (*c*) at the end of twelve years from the time at which such assurance, if it had then been executed by the tenant in tail, would, without the consent of any other person, have operated to bar the remainder.

But the above provision only applies to assurances which are effectual to bar the issue, and not to an unenrolled deed (*d*).

Estates *pur autre vie*.

If an estate *pur autre vie* is limited in the form of an estate tail, although it will descend according to the terms of the limitation during its continuance, the

(*z*) Sect. 71.
(*a*) Sect. 74.
(*b*) 3 & 4 W. 4, c. 27, ss. 21, 22; 37 & 38 Vict. c. 57, s. 9.
(*c*) 37 & 38 Vict. c. 57, s. 6.
(*d*) Penny *v.* Allen, 7 D. M. & G. 409; Morgan *v.* Morgan, L. R. 10 Eq. 99.

quasi tenant in tail can bar the entail and the remainders over by any act *inter vivos*, without observing the formalities prescribed by the Fines and Recoveries Abolition Act, but not by will, and the existence of prior incumbrances creates no impediment (*e*). The renewal by a *quasi* tenant in tail of a lease for lives will bar the entail and the remainders over, and the result will be the same, although the surrendered lease may be vested in trustees and they do not concur in the surrender (*f*). If the *quasi* entail is preceded by a life interest, the remainders over will not be barred without the concurrence of the tenant for life (*g*), although without such concurrence it would seem that the *quasi* tenant in tail can bar himself and his issue (*h*).

(*e*) Allen *v.* Allen, 2 Dru. & War. 327.

(*f*) Grey *v.* Mannock, Eden, 339; Blake *v.* Blake, 1 Cox, 266; Campbell *v.* Sandys, 1 Sch. & Lef. 225; Doe d. Blake *v.* Luxton, 6 Term Rep. 289.

(*g*) Wastney *v.* Chappell, 3 Bro. P. C. 53, Tom. Ed.

(*h*) Allen *v.* Allen, 2 Dru. & War. 337.

No. I.

DISENTAILING ASSURANCE BY TENANT IN TAIL IN POSSESSION.

DISENTAILING ASSURANCE *of* FREEHOLDS *by a* TENANT IN TAIL *in* POSSESSION.

THIS INDENTURE, made, &c., BETWEEN A. B. of, &c. (*tenant in tail*), of the one part, and C. D. of, &c. (*grantee to uses*), of the other part: WHEREAS by an indenture dated, &c., and made, &c., the capital messuage or mansion house called ——, and divers other messuages, lands, and hereditaments situate in the parishes of ——, in the county of ——, in the said indenture and the schedules thereto particularly described, were settled and assured to the use of H. B. during his life, with remainder (subject to certain charges which have determined) to the use of the first son of the said H. B. in tail male with divers remainders over: AND WHEREAS the said H. B. died on the —— day of ——, 18—: AND WHEREAS the said A. B. is the first son of the said H. B., and he attained the age of twenty-one years on the —— day of ——, 18—: NOW THIS INDENTURE WITNESSETH, that the said A. B. doth by this deed, intended to be enrolled in the Central Office of the Supreme Court of Judicature pursuant to the statute in that behalf, convey unto the said C. D., ALL the capital and other messuages, lands, tenements, and hereditaments comprised in and settled by the said indenture, and all other (if any) the lands, tenements, and hereditaments in England or Wales of or to which the said A. B. is seised or entitled as tenant in tail, whether at law or in equity, under the said indenture or otherwise howsoever: TO HOLD the same (freed and discharged from the estate tail of the said A. B., and all remainders, estates, and powers, to take effect after the determination or in defeasance of such estate tail), unto the said C. D. in fee simple, TO THE USE of the said A. B. in fee simple.

Parties.

Recital of settlement.

Death of tenant for life, and attainment by tenant in tail of his majority.

Witnessing part,

Conveyance of parcels

to grantee to use of grantor in fee simple.

IN WITNESS, &c.

No. II.

CONVEYANCE *by a* TENANT IN TAIL *in* POSSESSION *to a Purchaser for an* ESTATE *in* FEE SIMPLE.

CONVEYANCE BY TENANT IN TAIL IN POSSESSION.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*vendor*), of the one part, and C. D. of, &c. (*purchaser*), of the other part (*recite settlement, death of H. B., and that A. B. is eldest son as in last Precedent*): AND WHEREAS the said A. B. has agreed to sell to the said C. D. the hereditaments hereinafter described (being part of the hereditaments settled by the hereinbefore recited indenture) at the price of £——: NOW THIS INDENTURE WITNESSETH, that in pursuance of the aforesaid agreement, and in consideration of the sum of £——, &c. (*the receipt, &c.*), the said A. B., as beneficial owner, doth by this deed intended to be enrolled in the Central Office of the Supreme Court of Judicature pursuant to the statute in that behalf, convey unto the said C. D. ALL, &c. (*parcels*): TO HOLD the same (freed and discharged from the estate tail of the said A. B., and all remainders, estates, and powers to take effect after the determination or in defeasance of such estate tail) unto and to the use of the said C. D. in fee simple.

Parties.

Agreement for sale in fee simple.

Conveyance of parcels to purchaser in fee free from estate tail and remainders over.

IN WITNESS, &c.

No. III.

DISENTAILING ASSURANCE *by a* TENANT IN TAIL *in* REMAINDER: *the* PROTECTOR *joins to give his* CONSENT.

BY TENANT IN TAIL IN REMAINDER WITH CONSENT OF PROTECTOR.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*tenant in tail in remainder*), of the first part, H. B. of, &c. (*protector*), of the second part, and C. D. of, &c. (*releasee*), of the third part: WHEREAS M. N., late of ——, deceased, duly made his will, dated the —— day of ——, and thereby gave and devised all his manors, messuages, lands,

Parties.

Recite will.

BY TENANT IN TAIL IN REMAINDER WITH CONSENT OF PROTECTOR.

tenements, and hereditaments situate in the county of ——, being freehold of inheritance, to the use of the said H. B. and his assigns for his life, without impeachment of waste, with remainder after his decease to the use of his first and other sons successively in tail male, with divers remainders over (*Death of testator and probate of his will, and that A. B. is eldest son of H. B., and has attained twenty-one*): NOW THIS INDENTURE WITNESSETH that the said A. B., with the consent of the said H. B. as the protector of the settlement made by the said will (testified by his being a party to and executing these presents), doth by this deed, intended to be enrolled in the Central Office of the Supreme Court of Judicature pursuant to the statute in that behalf, convey unto the said C. D. ALL and singular the manors, messuages, lands, and hereditaments devised by the said will, or which have by any means become subject to the uses thereof: TO HOLD the same (subject to the estate for life of the said H. B. therein, and to the powers and privileges annexed to or exerciseable during the continuance of the same estate, but freed and absolutely discharged of and from the said estate tail of the said A. B., and all remainders, estates, and powers to take effect after the determination or in defeasance of such estate tail) unto the said C. D. in fee simple, TO THE USE of the said A. B. in fee simple.

Conveyance by tenant in tail with consent of protector.

To grantee in fee simple to use of grantor in fee simple, subject to life estate of protector.

IN WITNESS, &c.

No. IV.

OF STOCK TO BE LAID OUT IN LAND.

DEED *barring the* ENTAIL *in* STOCK *liable to be laid out in the purchase of* LAND.

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*tenant for life*), of the first part, C. D. of, &c. (*tenant in tail*), of the second part, and L. M. of, &c., and N. O. of, &c. (*trustees*), of the third part: WHEREAS G. H., late of ——, deceased, duly made his will, dated the —— day of ——, and thereby gave and bequeathed a sum of £1,500 Consolidated £3 per Cent. Annuities, then standing in his name, unto the

Recite will.

said L. M. and N. O., their executors, administrators, and assigns, upon trust to convert the same into money as soon as conveniently might be after his (the said testator's) decease, and to lay out the moneys to arise thereby in the purchase of freehold lands of inheritance: AND the said testator directed that the lands so to be purchased should be conveyed and settled to the use of his wife the said A. B. for her life, and after her decease to the use of his eldest son the said C. D. in tail male, with divers remainders over (*Death of testator and probate of will*): AND WHEREAS, shortly after the death of the said testator, the said sum of £1,500 Consolidated £3 per Cent. Annuities was transferred into the names of the said L. M. and N. O. in the books of the Governor and Company of the Bank of England, and the same has since been converted into £1,500 £2$\frac{3}{4}$ per Cent. Consolidated Stock, but no part thereof has been laid out in the purchase of land pursuant to the aforesaid trust and direction in that behalf contained in the said will: AND WHEREAS the said A. B. and C. D. have agreed to disentail the said stock in the manner hereinafter expressed: NOW THIS INDENTURE WITNESSETH, that the said A. B. and C. D. do by this deed, intended to be enrolled in the Central Office of the Supreme Court of Judicature pursuant to the statute in that behalf, assign unto the said L. M. and N. O. ALL THAT THE SAID sum of £1,500 2$\frac{3}{4}$ per Cent. Consolidated Stock, and the dividends thereof: TO HOLD the same (freed and discharged from the trust or direction contained in the said will for laying out the said stock or the moneys to arise by the sale thereof in the purchase of lands, and from the estate tail of the said C. D. therein, and all remainders, estates, and powers to take effect after the determination or in defeasance of such estate tail) unto the said L. M. and N. O. as personal estate: IN TRUST as to the dividends thereof, for the said A. B. during her life; and from and after her decease, IN TRUST for the said C. D. absolutely.

IN WITNESS, &c.

OF STOCK TO BE LAID OUT IN LAND.

Death of testator, and probate of will.

That stock has not been laid out in land.

Assignment of stock to trustees.

In trust for tenant for life, with remainder to tenant in tail absolutely.

No. V.

CONVEYANCE TO USES BY TENANT FOR LIFE AND TENANT IN TAIL.

CONVEYANCE *by a* TENANT FOR LIFE *and* TENANT IN TAIL *in remainder of* LANDS, *and* STOCK *liable to be laid out in lands, to such uses as they shall* JOINTLY *appoint, and in* DEFAULT *of such* APPOINTMENT, *to the subsisting* USES *under the original* SETTLEMENT.

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*tenant for life*), of the first part, D. B. of, &c. (*tenant in tail in remainder*), of the second part, and E. F. of, &c. (*grantee to uses*), of the third part: WHEREAS by an indenture dated, &c., and made, &c., the manor of ——, and the capital messuage or mansion-house called ——, and divers other messuages, lands, tenements, and hereditaments situate in the parishes of ——, in the said indenture particularly described were limited and assured, from and after the solemnization of the said then intended marriage, to the use of the said A. B. during his life without impeachment of waste, with remainder after his decease to the use and intent that if C. B. (*the wife of A. B.*) should survive the said A. B., she should receive thereout a yearly rent-charge of £—— during her life by way of jointure, and subject thereto to the use of the said (*trustees of term*), their executors, administrators, and assigns, for the term of 1,000 years computed from the decease of the said A. B., UPON the trusts therein declared for raising portions for the younger children of the said then intended marriage, with remainder to the use of the first son of the said then intended marriage in tail male, with remainders over: AND in the said indenture is contained the usual power of sale and exchange, and a direction that the moneys to arise from any such sale shall be laid out in the purchase of other hereditaments, and shall in the meantime be invested in or upon the public stocks or funds of the United Kingdom, or upon government or real securities: AND WHEREAS some of the hereditaments comprised in the said indenture of settlement have been from time to time disposed of by way of sale or exchange under the powers in that behalf contained in the said indenture, and part of the moneys

Recite settlement.

Sale of part of settled property, and investment of proceeds in Consols.

CONVEYANCE TO USES BY TENANT FOR LIFE AND TENANT IN TAIL.

arising from such sales has been laid out and invested in the purchase of other hereditaments which have been conveyed to the uses of the said indenture of settlement, and the remainder thereof is represented by the sum of £—— $2\frac{3}{4}$ per Cent. Consolidated Stock standing in the names of the ——, the trustees of the said indenture, in the books of the Governor and Company of the Bank of England: AND WHEREAS the said D. B. is the first son of the said A. B. and C. his wife, and he attained the age of twenty-one years on the —— day of —— last: AND WHEREAS the said A. B. and D. B. have agreed that the said hereditaments and stock shall be respectively disentailed for the purposes and in the manner hereinafter expressed: NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement in this behalf, THE said A. B. and D. B., with the consent as to the said D. B. of the said A. B. as the protector of the settlement, do by this deed intended to be enrolled in the Central Office of the Supreme Court of Judicature pursuant to the statute in that behalf, convey unto the said E. F., ALL the manor, messuages, lands, tenements, and hereditaments comprised in and settled by the said indenture of settlement, except such of them as have been disposed of by way of sale or exchange as aforesaid, AND ALSO (by way of conveyance and not of exception) ALL other the hereditaments which by purchase, exchange, inclosure, or otherwise, have become and are now subject either at law or in equity to the uses of the said indenture: TO HOLD the said premises (subject to the said yearly rent-charge of £—— by the said indenture of settlement limited to the said C. B. as aforesaid, and the powers and remedies for enforcing payment thereof, and subject also to the said term of 1,000 years limited by the same indenture and the trusts thereof, but freed and discharged from the estate in tail male therein of the said D. B., and all remainders, estates, and powers to take effect after the determination or in defeasance of such estate in tail male), unto the said E. F., in fee simple: TO SUCH USES, upon such trusts, and with and subject to such powers and provisions as the said A. B. and D. B. shall by any deed or deeds jointly appoint: AND IN DEFAULT of and until such appointment, and so far as any such appointment shall not extend, TO SUCH USES, upon such trusts, and with and subject to such powers and provisions as were subsisting in the said premises immediately before the

Agreement to disentail.

Witnessing part.

Tenant for life and tenant in tail convey.

Parcels.

Habendum (subject to charges).

To such uses as tenant for life and tenant in tail shall jointly appoint, and in default of appointment, to uses subsisting under settlement.

CONVEYANCE TO USES BY TENANT FOR LIFE AND TENANT IN TAIL.

execution of these presents: AND THIS INDENTURE ALSO WITNESSETH, that in further pursuance of the said agreement, THE said A. B. and D. B. do by this deed intended to be enrolled as aforesaid assign unto the said E. F., THE said sum of £—— $2\frac{3}{4}$ per cent. Consolidated Stock, and all other (if any) the moneys, stocks, funds, and securities liable to be laid out in the purchase of lands to be settled to the uses of the said indenture of settlement: TO HOLD the same (freed and discharged from the estate in tail male of the said D. B. and all remainders, &c. (*as before*)), unto the said E. F., UPON such trusts and with and subject to such powers and provisions as the said A. B. and D. B. shall by any deed or deeds jointly appoint: AND in default of and until such appointment, and so far as any such appointment shall not extend, upon the trusts, and with and subject to the powers and provisions which were subsisting therein immediately before the execution of these presents.

Assignment of stock.

Upon similar trusts.

IN WITNESS, &c.

No. VI.

BY TENANT IN TAIL IN REMAINDER WITH CONSENT OF PROTECTOR TO USES.

CONVEYANCE *of an* ESTATE *by a* TENANT IN TAIL *in remainder, with the consent of the* TENANT FOR LIFE (*subject to the uses by the* SETTLEMENT *limited to take effect prior to the* ESTATE TAIL), *to like uses as in the last Precedent.*

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN D. B. of, &c. (*tenant in tail in remainder*), of the first part, A. B. of, &c. (*tenant for life*), of the second part, and E. F. of, &c. (*grantee to uses*), of the third part (*recite indenture whereby divers hereditaments therein described were settled to use of A. B. for life, with remainder to the first and other sons of A. B. in tail male, with remainder to C. B. for life, with remainder to the first and other sons of C. B. successively in tail male, with divers,*

Recite settlement creating the entail.

remainders over): AND WHEREAS in exercise of powers in that behalf contained in the said indenture of settlement, some of the hereditaments therein comprised have been from time to time sold, and the moneys arising from such sales have been laid out in the purchase of other hereditaments which have been conveyed to the uses of the said indenture of settlement: [AND WHEREAS (*a*) in the schedule hereunder written are set forth the particulars as well of the hereditaments originally comprised in the said indenture of settlement which now remain unsold, as also of the hereditaments which have been purchased and conveyed to the uses of the said indenture as aforesaid:] AND WHEREAS the said A. B. has at present no issue male: AND WHEREAS the said C. B. died on the —— day of ——: AND WHEREAS the said D. B. is the first son of the said C. B., and he attained the age of twenty-one years on the —— day of ——: NOW THIS INDENTURE WITNESSETH, that in pursuance of an agreement in this behalf entered into between the said A. B. and D. B., THE said D. B., with the consent of the said A. B. as the protector of the settlement (testified by his executing these presents), doth by this deed intended to be enrolled in the Central Office of the Supreme Court of Judicature, pursuant to the statute in that behalf, convey unto the said E. F., ALL the messuages, lands, tenements, and hereditaments [described in the schedule hereunder written: AND ALL other (if any) the lands, tenements, and hereditaments] (*b*) now subject or liable at law or in equity to the uses and limitations of the said indenture of settlement: TO HOLD the same (freed and discharged from the estate in tail male of the said D. B. therein and from all remainders, estates, and powers, to take effect after the determination or in defeasance of such estate tail, but subject and without prejudice to all uses, estates, limitations, and charges by the said indenture of settlement limited or created, having priority over the estate in tail male of the said D. B., and to all the powers and privileges annexed or belonging to such prior uses, estates, and limitations respectively, or exercisable during the continuance thereof respectively), unto the said E. F. in fee simple: NEVERTHELESS TO SUCH USES, upon such trusts, and with and subject to such powers

BY TENANT IN TAIL IN REMAINDER WITH CONSENT OF PROTECTOR TO USES.

Exercise power of sale and exchange.

That settled hereditaments are described in schedule.

Conveyance by tenant in tail with consent of protector.

Parcels

(subject to prior estates).

To such uses as tenant for life and tenant

(*a*) This recital may be omitted if it is not convenient to add a schedule. See the last Precedent.

(*b*) The words in brackets will be omitted, if there is no schedule.

BY TENANT IN TAIL IN REMAINDER WITH CONSENT OF PROTECTOR TO USES.

and provisions as the said A. B. and D. B. shall by any deed or deeds jointly appoint: And in default of and until such joint appointment, and so far as any such joint appointment shall not extend, To such and the same uses, upon such and the same trusts, and with and subject to such and the same powers and provisions as were subsisting in the said hereditaments and premises immediately before the execution of these presents.

in tail should appoint, and in default of appointment to the uses of the settlement.

In witness, &c.

No. VII.

SURRENDER OF COPYHOLDS TO BAR ENTAIL.

SURRENDER *by* Tenants *in* Common *in* Tail *of* Copyholds *to* bar *the* Entail.

Tenants in common in tail surrender

The Manor *of* —— } BE IT REMEMBERED, that on
in the County of —— } this —— day of ——, A. B. of, &c., and C. D. of, &c. (being the two only daughters of X. Y., late of, &c., deceased), come before L. M. of, &c., steward of the said manor out of court, and for the purpose of barring their respective estates tail in the hereditaments hereinafter mentioned, and all remainders, estates, and powers to take effect after the determination or in defeasance of such estate tail respectively, surrender into the hands of the lord of the said manor, by the hands and acceptance of his steward, according to

parcels

the custom thereof, All that, &c. (*parcels*), To which hereditaments the said X. Y. was admitted tenant at a court holden in and for the said manor on the —— day of ——, 18—, and which hereditaments were (with other hereditaments) devised by the will of the said X. Y., dated the —— day of ——, 18—, unto his daughters as tenants in common in tail, with remainders over, And all other (if any) the copyhold hereditaments held of the said manor of or to which the said A. B. and C. D. are seised or entitled as tenants in common in tail under the said will or otherwise: To the use of the said A. B. and C. D. and their heirs in equal shares as tenants in common, according to the custom of the said manor, by and under the rents, suits, and

to use of surrenderors as tenants in common in fee free from estates tail, &c.

services therefor due and of right accustomed, freed and discharged from the respective estates tail of them the said A. B. and C. D., and all remainders, estates, and powers, to take effect after the determination or in defeasance of such estates tail respectively. SURRENDER OF COPYHOLDS TO BAR ENTAIL.

This surrender was taken and accepted the day and year above written, by me } (Signed) L. M. (steward).

No. VIII.

CONSENT *of* PROTECTOR *of an* ESTATE TAIL *in remainder in* COPYHOLDS *by a* DEED, *to be entered on the Court Rolls for the purpose of enabling the Tenant to bar the* ENTAIL. CONSENT OF PROTECTOR.

TO ALL TO WHOM THESE PRESENTS SHALL COME, A. B., of, &c. (*tenant for life and protector of the settlement*), sends greeting: WHEREAS C. D., late of, &c., deceased, duly made his will, dated the —— day of ——, and thereby gave all his copyhold and customary hereditaments, situate at ——, and held of the manor of ——, unto the said A. B. and his assigns for his life, and from and after his decease to E. F. in tail male, with divers remainders over: AND WHEREAS the said C. D. died on the —— day of ——, without having revoked or altered his said will: AND WHEREAS the said A. B. has agreed to give his consent to the disposition by the said E. F. of the copyhold or customary hereditaments devised by the said will in the manner hereinafter expressed: NOW THESE PRESENTS WITNESS, that in pursuance of the said agreement in this behalf, the said A. B., as protector of the settlement created by the said will of the said C. D., doth by these presents consent to any and every surrender, disposition, or assurance which the said E. F. may make or execute at any time or times hereafter, of the said copyhold or customary hereditaments so devised as aforesaid,

Recite devise to protector for life, remainder to tenant in tail.

Protector is desirous of giving his consent.

Protector consents to the estate tail being barred.

CONSENT OF PROTECTOR.

for barring the estate tail of the said E. F. in the same hereditaments, and all remainders, estates, and powers, to take effect after the determination or in defeasance of such estate tail, and for limiting the same hereditaments (subject and without prejudice to the said estate for life therein of the said A. B., and all powers and privileges annexed to such estate for life), to the use of the said E. F. and his heirs, or otherwise as he the said E. F. may think proper.

In witness, &c.

No. IX.

SURRENDER TO BAR ESTATE TAIL IN REMAINDER IN COPYHOLDS.

SURRENDER *to bar an* Estate Tail *in* Remainder *in* Copyholds, *the Protector's consent having been obtained by deed.*

The Manor *of* —— } WHEREAS, at a court holden in and
in the county of —— } for this manor on the —— day of ——,
C. D., late of, &c., was admitted tenant to the copyhold hereditaments hereinafter described: And whereas the said C. D. duly made his will dated the —— day of ——, and thereby gave and devised all his copyhold and customary hereditaments held of the said manor unto A. B. and his assigns during his life, and from and after his decease to E. F. in tail male, with divers remainders over: And whereas the said C. D. died on the —— day of ——, without having revoked or altered his said will: And whereas, at a court holden for the said manor of ——, on the —— day of ——, the said A. B. was duly admitted tenant of the copyhold hereditaments hereinafter described as tenant for life under the said will: And whereas by a deed poll under the hand and seal of the said A. B., dated the —— day of ——, the said A. B., as protector of the settlement created by the said will, did give his consent to any and every surrender, disposition, or assurance which the said E. F. might make or execute at any time or times thereafter of the said copyhold or customary hereditaments, for barring the estate tail of the said E. F. in the same heredita-

Devise to protector for life, remainder to tenant in tail male.

Death of testator.

Admission of protector.

Deed poll giving protector's consent.

SURRENDER TO BAR ESTATE TAIL IN REMAINDER IN COPYHOLDS.

ments, and all remainders, estates, and powers, to take effect after the determination or in defeasance of such estate tail, and for limiting the said hereditaments (subject and without prejudice to the said estate for life therein of the said A. B., and all powers and privileges annexed to such estate for life), to the use of the said E. F., his heirs and assigns, for ever, or otherwise as he the said E. F. might think proper, according to the custom of the said manor: NOW BE IT REMEMBERED, that the said E. F., on this —— day of ——, comes before L. M. of, &c., steward of the said manor, out of court, and surrenders into the hands of the lord of the said manor, by the hands and acceptance of the said steward, according to the custom of the said manor (the said recited deed poll being first produced to the steward) (*a*), ALL THAT, &c. (*parcels*), To which hereditaments and premises the said A. B. was admitted on the —— day of ——, as aforesaid, AND all other (if any) the copyhold hereditaments held of the said manor, of or to which the said E. F. is seised or entitled as tenant in tail under the said will or otherwise, TO THE USE of the said E. F. and his heirs for ever, at the will of the lord, according to the custom of the said manor, at and under the rents and services therefor due and of right accustomed, subject nevertheless and without prejudice to the said estate for life of the said A. B., and all powers and privileges annexed to such estate, but freed and discharged from the estate tail of the said E. F., and all remainders, estates, and powers, to take effect after the determination or in defeasance of such estate tail.

Surrender accordingly to bar estate tail.

This surrender was accepted and taken the day and year first above written, by me } (L. M.)
Steward of the manor.

(*a*) If the protector gives his consent in person, the following words should be introduced: "With the consent of the said A. B., protector of the settlement made by the said will, to the steward at the same time given by the said A. B."

No. X.

DISENTAILING ASSURANCE BY EQUITABLE TENANT IN TAIL OF COPYHOLDS.

DISENTAILING Assurance *by an* Equitable Tenant in Tail *of* Copyholds.

Parties.

THIS INDENTURE, made, &c., Between A. B. of, &c. (*tenant in tail*), of the one part, and C. D. of, &c., and E. F. of, &c. (*trustees*), of the other part (*recite will whereby the copyhold hereditaments were devised unto and to the use of the said C. D. and E. F., their heirs and assigns, upon trust for M. N. for his life, with remainder in trust for the said A. B. in tail male.—Death of testator without having altered his said will, and probate thereof*):

Death of tenant for life.

And whereas the said M. N. died on the —— day of ——, 18—:

Conveyance by tenant in tail to trustees in trust for tenant in tail in fee simple.

NOW THIS INDENTURE WITNESSETH, that the said A. B. doth by this deed, intended to be entered on the court rolls of the said manor, convey unto the said C. D. and E. F., All, &c. (*copyhold parcels*): And all other the copyhold hereditaments (if any) held of the said manor, to which the said A. B. is entitled as tenant in tail in equity under the said will or otherwise: To hold the same unto the said C. D. and E. F., in customary fee simple, In trust for the said A. B. in customary fee simple, freed and absolutely discharged of and from the said estate tail of the said A. B., and all remainders, estates, and powers, to take effect after the determination or in defeasance of such estate tail.

In witness, &c.

No. XI.

DEED *by* TENANT IN TAIL *in* REMAINDER *to create a* BASE FEE.

BY TENANT IN TAIL IN REMAINDER TO CREATE A BASE FEE.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*tenant in tail*), of the one part, and C. D. of, &c. (*grantee*), of the other part (*recite will devising hereditaments to X. Y., for life, with remainder to A. B. in tail, with remainder over*): AND WHEREAS the said A. B. is desirous of barring his estate tail in remainder of the said hereditaments and of converting the same into a base fee: NOW THIS INDENTURE WITNESSETH, that the said A. B. doth by this deed intended to be enrolled in the Central Office of the Supreme Court of Judicature pursuant to the statute in that behalf, convey unto the said C. D., ALL, &c. (*parcels*), and all other (if any) the hereditaments of or to which the said A. B. is seised or entitled for an estate tail in remainder under the said will: TO HOLD the same (subject to the said estate for life of the said X. Y. therein), unto the said C. D. and his heirs, To the use of the said A. B., his heirs and assigns, freed and discharged from the estate tail of the said A. B., and to the intent that the same may be converted into a base fee.

Parties.

Tenant in tail conveys parcels to grantee (subject to estate for life), to use of grantor for a base fee.

IN WITNESS, &c.

No. XII.

DEED *to* ENLARGE *a* BASE FEE *into an* ESTATE *in* FEE SIMPLE ABSOLUTE (*by Indorsement on last Precedent*).

DEED TO ENLARGE BASE FEE.

THIS INDENTURE, made the —— day of ——, BETWEEN the within-named A. B. (*owner of base fee*), of the one part, and the within-named C. D. (*grantee*), of the other part: WHEREAS the within-named X. Y. (*tenant for life*) died on the —— day

Parties.

Death of tenant for life.

DEED TO ENLARGE BASE FEE.

of ——: And whereas the said A. B. is desirous of enlarging the base fee into which his estate tail was converted by the within-written indenture into an estate in fee simple absolute: NOW THIS INDENTURE WITNESSETH, that the said A. B. doth by this deed intended to be enrolled in the Central Office of the Supreme Court of Judicature pursuant to the statute in that behalf, convey and confirm unto the said C. D., The hereditaments and premises comprised in and conveyed by the within-written indenture, or expressed so to be: To hold the same unto the said C. D. in fee simple, To the use of the said A. B., in fee simple, freed and discharged from all remainders, estates, and powers to take effect after the determination or in defeasance of the base fee into which the estate tail of the said A. B. was converted by the within-written indenture, and to the intent that such base fee may be enlarged into an estate in fee simple absolute.

That owner of base fee is desirous of enlarging same.

Owner of base fee conveys parcel

to grantee to use of grantor in fee simple free from remainders, &c.

In witness, &c.

BONDS (*a*).

No. I.

BOND *for* PAYMENT *of* MONEY *by* INSTALMENTS.

FOR PAYMENT OF MONEY BY INSTALMENTS.

Bond.

KNOW ALL MEN BY THESE PRESENTS, that I, A. B., of, &c. (*obligor*), am held and firmly bound (*b*) to C. D. of, &c. (*obligee*), in the sum of £—— (*twice the amount of the sum to be repaid*), to be paid to the said C. D. SEALED with my seal: DATED this —— day of ——, in the year 18—.

Condition of Bond.

NOW THE CONDITION of the above-written bond or obligation is such, that if the above-bounden A. B. shall pay to the said C. D. the sum of £—— by the instalments following (that is to say), the sum of £—— part thereof, on the —— day of —— now next ensuing, the sum of £——, other part thereof, on the —— day of ——, 18—, and the sum of £——, residue thereof, on the —— day of —— in the same year, and shall also at the several times hereinbefore appointed for payment of the said several instalments of the said sum of £——, pay to the said C. D. interest for the said sum of £——, or such part

(*a*) By the Stamp Act, 1891, the stamp duties chargeable on bonds for payment or repayment of money or the transfer or retransfer of stock, are the same as on a mortgage for the same purposes. (See Stamps on Mortgages, vol. i.) The stamp duties chargeable where the bond is to secure an annuity, except upon the original creation thereof by way of sale are stated under the head of stamps on settlements, *supra*, p. 290. A bond of any kind not specifically charged with any duty is liable to a 10*s.* stamp, unless the amount limited to be recoverable does not exceed £300, in which case the duty will be the same *ad valorem* duty as on a bond for the amount limited.

(*b*) By the Conveyancing Act, 1881, sect. 59, it is provided that a bond or obligation under seal, although not expressed to bind the heirs, shall operate in law to bind the heirs and real estate as well as the executors and administrators and personal estate of the obligor.

FOR PAYMENT OF MONEY BY INSTALMENTS.

thereof as for the time being shall remain unpaid, after the rate of £—— for every £100 by the year (such interest to commence and be computed from the day of the date of the above-written bond or obligation), THEN the above-written bond or obligation shall be void, otherwise the same shall remain in full force and virtue.

No. II.

TO SECURE ANNUITY.

BOND *for* SECURING *the* PAYMENT *of an* ANNUITY (*a*).

(*BOND from A. B.* (*obligor*) *to C. D.* (*obligee*) *in the sum of* £——, *supra*, p. 693). WHEREAS the above-bounden A. B. lately agreed with the said C. D. for the sale to him of an annuity of £——, during his life, for the sum of £——, such annuity to be secured by the bond of the said A. B.: AND WHEREAS, in pursuance of the said agreement, the said C. D. has paid to the said A. B. the sum of £——, and the said A. B. has executed the above-written bond.

Condition of Bond.

NOW THE CONDITION of the above-written bond is such that if the said A. B. shall pay to the said C. D. during his life one annuity or yearly sum of £—— by equal quarterly portions, on the —— day of ——, the —— day of ——, the —— day of ——, and the —— day of ——, in every year, the first quarterly portion of the said annuity to be paid on the —— day of ——, then the above-written bond shall be void, otherwise the same shall remain in full force and virtue.

(*a*) The stamp duty on this bond will be the same *ad valorem* duty as on a conveyance in consideration of the purchase-money to be paid for the annuity. (See Stamp Act, 1891, s. 60.)

No. III.

BOND *of the* VENDOR *of an* ADVOWSON *for the payment to the purchaser of an* ANNUAL SUM *equal to* INTEREST *on the purchase-money until a* VACANCY.

BY VENDOR OF ADVOWSON FOR PAYMENT OF ANNUAL SUM UNTIL VACANCY.

(*BOND from A. B.* (*vendor*) *to C. D. in the penal sum of* £2,000.)

Recite agreement for sale of advowson and annual sum.

WHEREAS the said A. B. lately agreed with the said C. D. for the sale to him of the advowson of the rectory or parish church of ——, and of an annuity of £80 to be paid to the said C. D. until the said benefice should become vacant, and to be secured by the bond of the said A. B., at the price of £2,000: AND WHEREAS in pursuance of the said agreement, the said C. D. has paid to the said A. B. the said purchase-money of £2,000, and in consideration thereof the said A. B. has conveyed the said advowson unto and to the use of the said C. D. in fee simple by an indenture bearing even date with the above-written bond, and has also executed the above-written bond:

Payment of purchase-money and advowson.

Condition of Bond.

NOW THE CONDITION of the above-written bond is such that if the said A. B. shall pay to the said C. D. the annual sum of £80, until the said benefice shall become vacant by the death, resignation, or deprivation of X. Y., the present incumbent thereof, or if the said X. Y. shall be promoted to a bishopric, and the crown shall thereupon present to the said benefice, then, until the death, resignation, or deprivation of the person presented by the crown as aforesaid, the said annual sum to be paid by equal half-yearly payments on the —— day of —— and the —— day of ——, the first of such payments to be made on the —— day of —— next, then and in such case the above-written bond shall be void, otherwise the same shall remain in full force and virtue.

No. IV.

TO PURCHASER TAKING DOUBTFUL TITLE.

BOND *for quiet* ENJOYMENT *given by* VENDOR *to* PURCHASER *taking a doubtful* TITLE.

(*BOND from A. B.* (*vendor*) *to C. D.* (*purchaser*), *in the penal sum of* £——.) WHEREAS by an indenture, bearing even date with these presents and made between the above-bounden A. B. of the first part, the said C. D. of the second part, and E. F. of the third part, for the consideration therein mentioned, ALL, &c. (*parcels*), have been conveyed to the use of the said C. D. in fee simple: AND WHEREAS the hereditaments conveyed by the said indenture were formerly the property of G. H., and were conveyed in exchange by him to W. M., late of, &c., deceased, and his heirs, by an indenture dated, &c., and made, &c., and the title of the said A. B. to the said hereditaments is derived under the will of the said W. M., which bears date the —— day of ——, and was proved, &c., and under an indenture of appointment, dated the —— day of ——, being an appointment to him the said A. B., under a power in the said will contained: AND WHEREAS, previously to the execution of the said indenture of even date with these presents it was stipulated and agreed that in addition to the ordinary covenants for title implied by law the said A. B. should, for the satisfaction and indemnity of the said C. D., execute the above-written bond or obligation, subject to the condition hereinafter contained: NOW THE CONDITION of the above-written bond or obligation is such, that if the said C. D., his appointees, heirs, or assigns, shall from time to time, and at all times hereafter, hold, possess, and enjoy, the hereditaments comprised in the said indenture of even date with these presents, and every part thereof, and receive and take the rents and profits of the same, and every part thereof, for his and their own use, without any lawful let, suit, trouble, eviction, claim, or demand whatsoever of, from, or by any person or persons whomsoever, and free and clear of and from all adverse estates, titles, liens, charges, and incumbrances whatsoever, THEN the above-written bond or obligation shall be void, otherwise the same shall remain in full force and virtue.

Recite conveyance of property to obligee,

and circumstances connected with the title of obligor.

Agreement for Bond.

Condition of Bond.

No. V.

BOND *of* INDEMNITY *by a* VENDOR *to a* PURCHASER *on account of the* LOSS *of certain* TITLE DEEDS.

OF INDEMNITY BY VENDOR FOR LOSS OF TITLE DEEDS.

(*BOND from A. B.* (*obligor*) *to C. D.* (*obligee*), *in the penal sum of* £——.) *Recite conveyance to C. D.* (*purchaser*): AND WHEREAS an indenture dated the —— day of ——, and made between, &c. (*parties*), whereby the hereditaments comprised in the said indenture of even date herewith were (as is represented by the said A. B.) conveyed to the said A. B. in fee simple, has been diligently sought for by the said A. B., but cannot be found: AND WHEREAS previously to the execution of the said indenture of even date herewith, it was agreed that for the satisfaction and indemnity of the said C. D., and in addition to the ordinary covenants for title implied by law, the said A. B. should execute the above-written bond subject to the condition hereinafter contained: NOW THE CONDITION of the above-written bond or obligation is such, that if the said A. B. shall at all times hereafter keep indemnified the said C. D., his heirs and assigns, from and against all actions, losses, costs, charges, expenses, claims, and demands whatsoever in respect of the hereditaments and premises comprised in the said indenture of even date herewith to which he or they would not have been subject or liable if the said indenture of the —— day of —— (being an absolute conveyance of the said hereditaments to the said A. B. in fee simple) had been duly delivered to the said C. D. upon the completion of the purchase, and in particular from and against all actions, losses, costs, charges, expenses, claims, and demands whatsoever to which he or they is or are, or shall or may become subject or liable in case it shall appear that the said indenture is not in effect an absolute conveyance of all the said hereditaments to the said A. B. for an estate in fee simple in possession, free from incumbrances, or that the same indenture has been deposited with any person or persons by way of security, or has been otherwise dealt with in such a manner as to prejudice or affect the absolute title of the said A. B. to the said hereditaments or any part thereof, THEN, and in such case, the above-written bond shall be void, otherwise the same shall remain in full force and virtue.

Recite loss of indentures,

and agreement for indemnity.

Condition of Bond.

No. VI.

BY SURVIVING PARTNER FOR PAYMENT OF DECEASED PARTNER'S SHARE.

BOND *by* SURVIVING PARTNER *for* PAYMENT *of the* ESTIMATED VALUE *of* DECEASED PARTNER'S SHARE *by* INSTALMENTS *to his* EXECUTORS, *and for* INDEMNIFYING *his* ESTATE *against the* PARTNERSHIP LIABILITIES.

(*BOND from A. B.* (*obligor*) *to C. D. of, &c., and E. F. of, &c.,* (*obligees*), *in the penal sum of* £——.) WHEREAS by articles of partnership entered into on the —— day of ——, between the above-bounden A. B. of the one part, and G. H. of the other part, it was, amongst other things, provided that the said A. B. and G. H. should from thenceforth become and be co-partners in the trade or business of ——, under the firm of ——, for the term of —— years thence next ensuing, and also that in case either of the said partners should die before the expiration of the said partnership, then the surviving partner should within three months next after the decease of the partner so dying, settle with the executors or administrators of the deceased partner all accounts and matters relating to the said partnership, and that such surviving partner should pay unto the executors or administrators of such deceased partner such a sum as by the books of the said partnership should appear to have been contributed by such deceased partner to the capital stock of the partnership at his decease, and that such surviving partner should be considered to be the purchaser of such share of the deceased partner in the said capital stock at such sum as aforesaid, and that such surviving partner should purchase the share of the deceased partner in the residue of the property, credits, and effects of the said partnership, and the value of such residue should be ascertained by two persons, one to be chosen by the surviving partner, and the other by the executors or administrators of the deceased partner, and that the surviving partner should enter into a bond for securing to the executors or administrators of the deceased partner the amount of such sum and valuation by three equal instalments at the respective periods of six, twelve, and eighteen calendar months next after

Recite provisions in articles of partnership for making surviving partner purchaser of deceased partner's share.

Bond to be entered into by surviving partner for payment of estimated sum by instalments.

BY SURVIVING PARTNER FOR PAYMENT OF DECEASED PARTNER'S SHARE.

the decease of the partner who should die as aforesaid, with interest at the rate of £—— per cent. per annum from the time of such decease, and also a bond for indemnifying the estate of the deceased partner against the debts and liabilities of the said partnership: And whereas the said G. H. died on the —— day of ——, having first duly made and executed his last will and testament in writing, dated, &c., whereby he appointed the said C. D. and E. F. executors thereof, who shortly afterwards duly proved the said will in the principal Registry of the Court of Probate: And whereas by the books of the said partnership it appears that the said G. H. had contributed the sum of £—— sterling to the capital stock of the partnership at his decease: And whereas, pursuant to the provision in this behalf contained in the said articles as aforesaid, the value of the share of the deceased partner in the said residue of the said property, credits, and effects of the said partnership has been ascertained to be the sum of £——, making with the aforesaid sum of £—— the sum of £——: And whereas, in further pursuance of the said provision, the said A. B. hath executed the above-written bond or obligation: NOW THE CONDITION of the above-written bond or obligation is such that if the said A. B shall pay to the said C. D. and E. F., as part of the estate of the said G. H., deceased, the sum of £—— at the times and by the instalments following—*i.e.*, the sum of £—— on the —— day of ——, the sum of £—— on the —— day of ——, and the sum of £—— on the —— day of ——, and also on the same several days interest for the said sum of £—— or such part thereof as for the time being shall remain unpaid, at the rate of £—— per cent. per annum, to be computed from the date of the above-written bond or obligation, and do and shall at all times hereafter save harmless and keep indemnified the said C. D. and E. F. respectively, and all the estate and effects of the said G. H. deceased, of and from all debts and liabilities whatsoever, in respect of the said partnership business, Then the above-written bond or obligation shall be void, otherwise the same shall remain in full force and virtue.

Death of deceased partner, appointing executors.

Contribution of deceased partner to capital stock.

Sum at which his share is estimated.

Bond executed to secure the payment of that sum, and as an indemnity against the partnership liabilities.

Condition of Bond.

No. VII.

BY OBLIGOR FOR PERFORMANCE OF DUTIES.

BOND *with two* SURETIES *for the* FAITHFUL PERFORMANCE *of* DUTIES *on* APPOINTMENT *to a* RESPONSIBLE OFFICE.

KNOW ALL MEN BY THESE PRESENTS that we, A. B. of, &c. (*principal obligor*), C. D. of, &c., and E. F. of, &c. (*sureties*), are held and firmly bound to G. H. of, &c. (*obligee*) in the sum of £—— to be paid to the said G. H., for which payment to be well and truly made we bind ourselves and every two and one of us jointly and severally by these presents. Sealed with our seal: Dated this —— day of ——, 18—.

Appointment of obligor to office.

WHEREAS the said A. B. hath lately been appointed to and now holds the office of —— in the said society: NOW THE

Condition of Bond.

CONDITION of the above-written bond or obligation is such that if the said A. B. shall from time to time and at all times hereafter, so long as he shall hold the said office of ——, duly and regularly account for and pay to the directors for the time being of the said society, or to any person or persons who may be appointed for this purpose, all moneys which shall come to his hands, either in the capacity of —— of the said society, or by any other means on account of the said society, and in every other respect fully and faithfully perform and discharge the duties and obligations which from time to time shall devolve on him in such capacity as aforesaid, THEN the above-written bond or obligation shall be void, otherwise the same shall remain in full force and virtue.

No. VIII.

BOND *of* RESIGNATION *of an* ECCLESIASTICAL BENEFICE (*a*).

BOND OF RESIGNATION.

(*BOND by A. B. to C. D. in the penal sum of* £——): WHEREAS the above-named C. D. is the patron of the rectory of the parish church of ——, in the county of ——, and diocese of ——, which rectory is now vacant by the death of X. Y., the late rector thereof; and the said C. D. is about to present the above-bounden A. B. to the said rectory: AND WHEREAS the said A. B.

Recital of agreement to present obligor on condition of his executing Bond.

(*a*) The 9 Geo. 4, c. 94, sect. 1, provides that every engagement made after the passing of the Act for the resignation of any spiritual office, being a benefice with cure of souls, dignity, prebend, or living ecclesiastical, to the intent or purpose to be manifested by the terms of such engagement, that any one person whosoever, to be specially named and described therein, or one of two persons to be specially named and described therein, being such persons as are thereinafter mentioned, shall be presented to such spiritual office, or that the same shall be given or bestowed to or upon him, shall be valid, and the performance of the same may also be enforced in equity; provided that such engagement shall be so entered into before the presentation, nomination, collation, or appointment of the party so entering into the same as aforesaid.

9 Geo. 4, c. 94.

Sect. 2 provides that where two persons shall be so specially named and described in such engagement, each of them shall be, either by blood or marriage, an uncle, son, grandson, brother, nephew, or grand-nephew of the patron or of one of the patrons of such spiritual office, not being merely a trustee or trustees of the patronage of the same, or of the person or one of the persons for whom the patron or patrons shall be a trustee or trustees, or of the person or one of the persons by whose direction such presentation, collation, gift, or bestowing shall be intended to be made, or of any married woman whose husband in her right shall be the patron or one of the patrons of such spiritual office, or of any other person in whose right such presentation, collation, gift, or bestowing shall be intended to be made.

Sect. 4 provides that one part of the deed, instrument, or writing by which such engagement shall be made, given, or entered into, shall, within two calendar months next after the date thereof, be deposited in the office of the registrar of the diocese wherein the benefice shall be locally situate.

Sect. 5 provides that every resignation to be made in pursuance of any such engagement as aforesaid shall refer to the engagement in pursuance of which it is made, and state the name of the person for whose benefit it is made, and that it shall not be lawful for the ordinary to refuse such resignation unless upon good and sufficient cause to be shown for that purpose, and the person for whose benefit it is made must be presented within six calendar months next after notice of such resignation shall have been given to the patron.

Sect. 6 provides that the Act shall not apply to presentations by the Crown, or by any ecclesiastical or other public body.

BOND OF RESIGNATION.

has agreed to resign the said rectory in favour of E. D., a son of the said C. D., and now a student of —— College, in the University of ——, in case he shall take holy orders, and the said C. D., or other the patron or patrons for the time being of the said rectory shall desire to present him thereto: NOW THE CONDITION of the above-written bond is such that in case the said E. D. shall at any time during the life of the said A. B. be admitted into the full orders of a priest of the Church of England, and the said A. B. shall within six calendar months after being requested so to do in writing by the said C. D. or other the patron or patrons for the time being of the said rectory, well and effectually resign the said rectory to the bishop of the said diocese, and cause such resignation to be accepted, so that the said C. D. or other patron or patrons for the time being of the said rectory, may present thereto the said E. D., or in case the said E. D. shall not be admitted into priest's orders as aforesaid during the life of the said A. B., or the said A. B. shall not be requested to resign the said rectory in manner aforesaid, THEN and in any of the said cases the above-written bond shall be void, otherwise the same shall remain in full force and virtue.

Condition of Bond.

RELEASES.

No. I.

RELEASE *by* RESIDUARY LEGATEES *to the* TRUSTEES *and* EXECUTORS *of a* WILL *on the distribution of the* RESIDUARY ESTATE *of the* TESTATOR (*a*). RELEASE BY RESIDUARY LEGATEES.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c., and C. D. of, &c. (*releasors*), of the one part, and E. F. of, &c., and G. H. of, &c. (*releasees*), of the other part (*recite will whereby the testator devised and bequeathed to E. F. and G. H. all his real and personal estate, upon trust to sell and convert the same into money, and to stand possessed of the same, after the payment of his debts and legacies, in trust for the testator's wife for life, and after his decease, in trust for his children in equal* Parties. Recite will.

(*a*) Executors and trustees are entitled to have their accounts examined and settled before they hand over the balance to the cestuis que trust, and it is usual and proper in such case for the cestuis que trust to execute a formal deed of release. But if a trust is declared of a specified fund in favour of a specified person, so that there are in fact no accounts to be settled, and the trustee merely hands over the fund in its original state, in strict accordance with the declared trust, he is not entitled to require a release under seal: Chadwick *v.* Heatley, 2 Coll. 137; King *v.* Mullins, 1 Drew. 308. In what cases executors and trustees should have a release.

Releases should be drawn so as to show on the face of the deed that the releasors are fully aware of all the circumstances connected with the subject of release, of their own rights and position, and of the position of the intended releasees as to breach of trust, liability, &c., and they should also explicitly state the claims to be released. Releases will be generally governed by the recitals, so that where the words of the release are general, but the recitals refer only to a particular matter, the release will be construed to relate in fact to the matter recited: Ramsden *v.* Hylton, 2 Ves. Sen. 304; Pritt *v.* Clay, 6 Beav. 503. How releases ought to be drawn.

Where there are other persons than the releasors who can be interested in or may have claims on the matter or property to which the release relates, the releasing parties generally execute a covenant of indemnity as well as a release, but not otherwise.

Precedents of releases connected with sales of land will be found in Vol. I. under head of "Purchase Deeds."

RELEASE BY RESIDUARY LEGATEES.

shares, and appointed E. F. and G. H. executors of his will.—Death of testator, leaving the said A. B. and C. D. his only surviving children; and probate of his will): AND WHEREAS the said testator at the time of his decease was seised in fee simple of a certain freehold messuage or tenement, being No., &c., and situate, &c.: AND WHEREAS, pursuant to the trust for that purpose contained in the said will, the said E. F. and G. H. sold the said freehold hereditaments for the sum of £——: AND WHEREAS the said E. F. and G. H. shortly after the death of the said testator, possessed themselves of his personal estate, and converted into money such part thereof as did not consist of money, and with and out of the moneys produced by the sale of the said hereditaments, and the calling in and conversion of the said personal estate, and with and out of such part of the said personal estate as originally consisted of money, paid the funeral and testamentary expenses and debts of the said testator, and the legacies bequeathed by the said will, and the legacy duty thereon respectively, and there remained in the hands of the said E. F. and G. H., after such payments, the balance or sum of £——: AND WHEREAS the said E. F. and G. H., pursuant to the trust in that behalf contained in the said will, invested the said sum of £—— in, &c. (*state investment*): AND WHEREAS the said —— (*testator's wife*) died on the —— day of ——, and administration of her estate and effects was on the —— day of —— granted to the said A. B. and C. D. by or out of the principal Probate Registry of the High Court of Justice: AND WHEREAS the income of the said (*investments*) was duly paid to the said —— (*testator's wife*) during her life, and since her death has been divided between the said A. B. and C. D. as they hereby acknowledge: AND WHEREAS the said E. F. and G. H., at the request of the said A. B. and C. D., lately sold the said (*investment*), and the said sale produced the sum of £—— sterling, after deducting brokerage: AND WHEREAS the said sum of £—— has been reduced by the payment thereout of the legacy duty, and of the costs and expenses of the said trustees incurred in relation to the said trusts to the sum of £——: AND WHEREAS the said E. F. and G. H. have, before the execution of these presents, paid the said sum of £—— to the said A. B. and C. D. in equal shares, as they do hereby acknowledge: AND WHEREAS, previously to the last-mentioned

Seisin by testator of freehold messuage.

Sale of freeholds, balance after paying testamentary expenses and debts.

Investment of balance.

Death of wife and administration of her effects.

Application of income.

Sale of the investment.

Payment of proceeds to residuary legatees, who are satisfied with account rendered.

RELEASE BY RESIDUARY LEGATEES.

payment, the said E. F. and G. H. rendered to the said A. B. and C. D. an account of the real and personal estate of the said testator, and of the disposition and application of the same and the proceeds thereof, and of the income thereof respectively, and the said A. B. and C. D. examined the said account and are satisfied therewith, as they do hereby acknowledge and declare: AND they have therefore agreed to execute such release as is hereinafter contained: NOW THIS INDENTURE WITNESSETH, that in consideration of the premises, the said A. B. and C. D. hereby release the said E. F. and G. H., and each of them, from all actions, claims, and demands whatsoever, for or in respect or on account of the real and personal estate of the said testator, and the rents, profits, and income thereof respectively, or any part or parts thereof respectively, or any act, deed, matter, or thing whatsoever done or omitted to be done by the said E. F. and G. H., or either of them, in or about the execution of the said will or the trusts thereof, or in anywise relating to the premises: [AND the said A. B. and C. D. hereby jointly and severally covenant (*a*) with the said E. F. and G. H. to keep them indemnified against all claims and demands which may be made against them or either of them or the estate of the said testator by any unsatisfied creditor or creditors of the said testator].

Agreement for release.

Release by children to trustees and executors.

Covenant to indemnify against outstanding debts, if any.

IN WITNESS, &c.

(*a*) The covenant for indemnity as above should be given, if the executors have at the request of the residuary legatees omitted to insert the usual statutory notice for creditors, but not otherwise.

When executors are entitled to a covenant for indemnity.

No. II.

RELEASE TO TRUSTEES WHERE SHARE IS RETAINED.

RELEASE *by* RESIDUARY LEGATEES *to the* TRUSTEES *and* EXECUTORS *of a* WILL *on the distribution of the* RESIDUARY ESTATE, *where the* SHARE *of a* DAUGHTER *is settled by the Will, and is* RETAINED *by the* TRUSTEES *accordingly.*

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*one releasor*), of the first part, C. B. of, &c. (*another releasor*), of the second part, D. B. of, &c. (*another releasor*), of the third part, and E. F. of, &c., and G. H. of, &c. (*trustees*), of the fourth part (*recite will of testator, giving residuary estate to trustees, in trust to sell and convert and hold proceeds in trust for wife for life, and then for the children equally, the share of daughters to be settled—death of testator, leaving two sons and a daughter, A. B., C. B., and D. B., and probate of his will*):

Conversion of estate.

AND WHEREAS after the death of the testator the said trustees possessed themselves of his personal estate, and after paying thereout his funeral and testamentary expenses and debts, invested the residue, amounting to £——, on mortgage security (*Death of wife*):

Payment of succession duty and expenses.

AND WHEREAS the said E. F. and G. H. have since the death of the said —— (*wife*), called in the said sum of £——, and applied the sum of £——, part thereof, in payment of the legacy duty, and of the expenses incidental to the distribution of the trust money, leaving the sum of £—— in their hands:

Payment of two-thirds to sons, and retainer by trustees of one-third for daughter and her issue.

AND WHEREAS the said E. F. and G. H. have, before the execution of these presents, paid the sum of £—— (being one third part of the said sum of £——) to the said A. B., and the like sum of £—— (being one other third part thereof) to the said C. B. (as the said A. B. and C. B. do hereby respectively acknowledge), and have retained the sum of £—— (being the remaining one third part thereof) as and for the share of the said D. B., by the said will directed to be held in trust for her and her issue as aforesaid:

That account has been rendered and approved.

AND WHEREAS previously to the said payment, the said E. F. and G. H. rendered to the said A. B., C. B., and D. B., an account of the estate of

the said testator, and of the application thereof, and the said A. B., C. B., and D. B. examined the said account, and are satisfied therewith: NOW THIS INDENTURE WITNESSETH, that in consideration of the premises, the said A. B., C. B., and D. B., hereby release, &c. (*as in Precedent No. I.*, p. 705, *to the end*): PROVIDED ALWAYS, that these presents shall not extend to release the said E. F. and G. H., or either of them, from the said sum of £—— retained by them as and for the share of the said D. B. as aforesaid, or the future execution of the trusts declared concerning the same by the said will.

RELEASE TO TRUSTEES WHERE SHARE IS RETAINED.

Witnessing part.

Release.

Release not to extend to share of daughter retained by trustees.

IN WITNESS, &c.

No. III.

RELEASE *by the* NEXT OF KIN *to an* ADMINISTRATOR *on the* DISTRIBUTION *of the* ESTATE *of an* INTESTATE.

BY NEXT OF KIN TO ADMINISTRATOR.

THIS INDENTURE, made the —— day of ——, 18—, BETWEEN A. B. of, &c., C. B. of, &c., and D. B. of, &c. (*children of intestate*), of the one part, and E. B. of, &c. (*widow and administratrix of intestate*), of the other part: WHEREAS X. B., late of, &c., died intestate on the —— day of ——, 18—, leaving the said E. B., his widow, and the said A. B., C. B., and D. B., his only children: AND WHEREAS letters of administration of the estate and effects of the said X. B., deceased, were on the —— day of —— granted to the said E. B., his widow, by or out of the principal probate registry of the High Court of Justice: AND WHEREAS the debts and funeral and testamentary expenses of the said X. B., deceased, have been paid and satisfied by the said E. B., and his residuary estate (after making such payments) consisted of the particulars set forth in the first schedule hereunder written: AND WHEREAS it was lately agreed between the parties hereto that the said residuary estate should be allotted and divided to and among them in manner following (that is to say), 1st, that Lot 1, consisting of the particulars set

Parties.

Recital of death of intestate leaving a widow and children.

Administration granted to widow.

Payment of debts, and that residuary estate is set forth in first schedule.

Agreement for distribution, as shown in second schedule.

BY NEXT OF KIN TO ADMINISTRATOR.

forth in the first part of the second schedule hereunder written, and being of the estimated value of one equal third part of the whole, should be retained by the said E. B. as her share; 2ndly, that Lot 2, consisting of the particulars set forth in the second part of the same schedule, and being of the estimated value of two equal ninth parts of the whole, should be taken by the said A. B. as her share; 3rdly, that Lot 3, consisting of the particulars set forth in the third part of the same schedule, and being also of the estimated value of two equal ninth parts of the whole, should be taken by the said C. B. as his share; and, 4thly, that Lot 4, consisting of the particulars set forth in the fourth part of the same schedule, and being also of the estimated value of two equal ninth parts of the whole, should be taken by the said D. B. as his share: AND WHEREAS in pursuance of the said agreement Lot 1 has been retained by the said E. B., and Lots 2, 3, and 4, have been made over to the said A. B., C. B., and D. B., respectively, in the manner mentioned in the said second schedule, as they do hereby respectively acknowledge: AND WHEREAS the said A. B., C. B., and D. B., have examined the accounts of the said E. B. as such administratrix as aforesaid, and are satisfied therewith, and in testimony thereof have agreed to give to her this release: NOW THIS INDENTURE WITNESSETH, that in consideration of the premises the said A. B., C. B., and D. B., hereby release the said E. B. from all actions, claims, and demands whatsoever in relation to the estate and effects of the said X. B., deceased.

That widow had retained her share, and other lots had been made over to children.

That children have examined accounts.

Witnessing part.

Children release widow from all claims in relation to estate.

IN WITNESS, &c.

THE FIRST SCHEDULE ABOVE REFERRED TO.

Particulars of the Residuary Estate.

1. A leasehold house, being No. 2, —— Street, in the County of Middlesex, held for the unexpired residue of a term of 60 years computed from the —— day of ——, at the yearly rent of £——.
2. The household furniture and effects in the said house.
3. A sum of £——, Debenture Stock of the —— Railway Company.

4. A sum of £—— invested on mortgage of freehold hereditaments at ——. BY NEXT OF KIN TO ADMINISTRATOR.
5. A sum of £—— cash.

THE SECOND SCHEDULE ABOVE REFERRED TO.

(*Showing the distribution of the above.*)

Part 1. (*E. B.'s share.*)

The said leasehold house and the household furniture and effects in and about the same.

The sum of £—— cash.

Part 2. (*A. B.'s share.*)

The sum of £—— (part of the above-mentioned sum of £——), debenture stock of the —— Railway Company. This has been transferred to the said A. B. by a deed bearing even date with these presents.

The sum of £—— cash. This has been paid to the said A. B. by the said E. B.

Part 3. (*C. B.'s share.*)

The above-mentioned sum of £—— secured by mortgage. This mortgage has been transferred to the said C. B. by a deed bearing even date herewith (*a*).

Part 4. (*D. B.'s share.*)

The sum of £—— (residue of the above-mentioned sum of £——), debenture stock of the —— Railway Company. This has been transferred to the said D. B. by a deed bearing even date herewith.

The sum of £—— cash. This has been paid to the said D. B. by the said E. B.

(*a*) This transfer will be in the usual form; the introductory recital (after reciting the death of the intestate and the administration taken out by E. B.) will be as follows: "AND WHEREAS the said C. B. has become entitled in equity to the said principal sum of £—— secured by the said indenture of mortgage, and the interest thereof as the said E. B. hereby acknowledges."

No. IV.

BY NEXT OF KIN OF LEASEHOLDS.

RELEASE *by the* NEXT OF KIN *of an* INTESTATE *to the* ADMINISTRATRIX *of a* LEASEHOLD HOUSE *allotted to her on the* DISTRIBUTION *of the estate* (*to accompany the last Precedent*).

Parties.

Recital of lease, and death of lessee intestate, and grant of administration, that debts have been paid.

Agreement that widow should take leasehold house as part of her distributive share.

Children release to widow leasehold house.

THIS INDENTURE, made, &c. (*parties the same as last Precedent*): WHEREAS by an indenture of lease, &c. (*recite lease to X. B. the intestate*): AND WHEREAS the said X. B., &c. (*recite death of intestate leaving widow and children—and administration granted to widow, as in last Precedent*): AND WHEREAS all the debts and funeral and testamentary expenses of the said X. B., deceased, have been paid and satisfied as the said E. B. doth hereby declare: AND WHEREAS it is part of the arrangement for the distribution of the residuary estate of the said X. B. that the said C. B. shall take the said leasehold messuage and premises as part of her share thereof: NOW THIS INDENTURE WITNESSETH that in pursuance of the said arrangement the said A. B., C. B., and D. B., hereby release unto the said E. B., THE messuage or tenement and premises comprised in and demised by the said indenture of lease, To the end and intent that the same shall belong to the said C. B. beneficially for and during the residue of the term granted therein by the said indenture, subject to the rent thereby reserved and to the lessee's covenants therein, but freed and discharged from all claims and demands whatsoever of them the said releasing persons respectively in and to the same by virtue of the statutes for the distribution of effects of intestates or otherwise.

IN WITNESS, &c.

No. V.

RELEASE *by* RESIDUARY LEGATEES *to* EXECUTORS, *where the residue is not given in trust* (*a very short form*). BY RESIDUARY LEGATEES. (*Short Form.*)

KNOW ALL MEN BY THESE PRESENTS that we A. B. of, &c., and C. D. of, &c., being the residuary legatees under the will of X. Y., late of, &c., who died on the —— day of ——, 18—, have examined the account of the estate and effects of the said testator and of the administration thereof produced to us by E. F. of, &c., and G. H. of, &c., the executors of the said will [and a copy of which account is annexed hereto by way of schedule (*a*)], and have found the same to be correct, and we admit that the sum of £——, being the balance appearing by the said account to be due to us as residuary legatees, has been duly paid to us [*or* we admit that the money, stocks, funds, and securities appearing by the said account to represent the residuary estate of the said testator have been duly distributed and divided among us as stated in the said account]: AND we release the said E. F. and G. H. from all actions, claims, and demands whatsoever in relation to the estate and effects of the said testator.

Admission by residuary legatees that they have examined accounts and received balance due to them.

Release.

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

(*a*) If a copy of the account is not inserted in the schedule this will be omitted.

No. VI.

BY NEXT OF KIN. (*Short Form.*)

RELEASE *by* NEXT OF KIN *to* ADMINISTRATOR (*a very short form*).

Admission by next of kin that they have examined accounts and received balance due to them.

KNOW ALL MEN BY THESE PRESENTS that we A. B. of, &c., and C. D. of, &c., being the next of kin of X. Y., late of, &c., who died on the —— day of ——, 18—, intestate, have examined the account of the estate and effects of the said testator, and of the administration thereof produced to us by E. F., the administrator of the estate and effects of the said X. Y. [and a copy of which account is annexed hereto by way of schedule], and have found the same to be correct, and we admit that the sum of £——, being the balance appearing by the said account to be due to us as next of kin has been duly paid to us [*or* we admit that the money, stocks, funds, and securities, appearing by the said account to represent the residuary estate of the said X. Y., have been duly distributed and divided among us as stated in the said account]: AND we release the said E. F. from all actions, claims, and demands whatsoever in relation to the estate and effects of the said X. Y.

Release.

IN WITNESS, &c,

THE SCHEDULE ABOVE REFERRED TO.

No. VII.

RELEASE TO TRUSTEES OF SETTLEMENT.

RELEASE *by the* CESTUIS QUE TRUST *and those claiming under them to the* TRUSTEES *of a* SETTLEMENT *on the* DISTRIBUTION *of the* TRUST FUNDS.

Parties.

THIS INDENTURE, made the —— day of ——, 18—, BETWEEN A. B. of, &c. (*one releasor*), of the first part, C. B. of, &c. (*another releasor*), of the second part, G. H. of, &c., and I. K. of, &c. (*other releasors*), of the third part, D. E. of, &c., and F., his wife (*other releasors*), of the fourth part, and L. M. of, &c., and N. O. of, &c. (*trustees*), of the fifth part. WHEREAS, by an indenture dated, &c., and made between X. B., of the first part, Y. Z., of the second part, and (*trustees*), of

Recital of marriage settlement of parents.

RELEASE TO TRUSTEES OF SETTLEMENT.

the third part (being the settlement made on the marriage of the said X. B. and Y. Z.), it was declared that the said (*trustees*), their executors, administrators and assigns, should stand possessed of, &c. (*trust funds*): UPON trust, &c. (*usual trusts for children as parents or survivor should appoint, and in default of appointment equally, &c., hotchpot clause*): AND WHEREAS there have been issue of the said marriage two sons and one daughter, namely, the said A. B., C. B., and F. E., who have all attained the age of twenty-one years, and two other children who died under that age and unmarried: AND WHEREAS the said F. E., then F. B., intermarried with the said D. E. in the month of ——, 18—. And in contemplation of the said marriage by a deed poll under the hands and seals of the said X. B., and Y., his wife, dated, &c., the said X. B. and Y., his wife, in exercise of their said power in that behalf, appointed, &c. (*appointment of one-third of trust funds to F. E.*): AND by an indenture dated, &c., and made, &c. (being the settlement made on the marriage of the said D. E. and F. E., his wife), the said one-third share appointed to the said F. E. as last aforesaid was assigned unto the said G. H. and I. K., their executors, administrators, and assigns, upon the trusts therein declared concerning the same (*if the deed contains a receipt clause, recite it here*): AND WHEREAS the said X. B. died on the —— day of ——, 18—, and the said Y. B. died on the —— day of ——, 18—, without having made any appointment of the said trust funds except as aforesaid: AND WHEREAS the said L. M. and N. O. are the present trustees of the said indenture of settlement of the —— day of ——, having been appointed trustees thereof by an indenture dated, &c., and endorsed on the said indenture of settlement (*recite the various changes of investment, tracing the trust funds to their present state of investment, and showing that they are now represented by £—— Consolidated £3 per Cent. Annuities, and £—— invested on mortgage* (*a*)): AND WHEREAS the several persons parties hereto of the first four parts have

That there have been three children of marriage.

Marriage of daughter and appointment to her, and settlement of the share so appointed.

Deaths of father and mother.

Appointment of new trustees.

Present state of trust funds.

Request by beneficiaries to trustees to distribute.

(*a*) If the dealings with the trust funds have been complicated, it will be convenient to trace the history, and state the present investments in schedules, in which case the recitals may be as follows: "AND WHEREAS the trust funds settled by the said indenture of settlement have been from time to time dealt with as in the first schedule hereto is set forth, and the same are now represented by the particulars set forth in the second schedule hereto."

RELEASE TO TRUSTEES OF SETTLEMENT.

requested the said L. M. and N. O. as the trustees of the said indenture of settlement to distribute the said trust funds among them in the manner hereinafter expressed: And whereas, in compliance with such request, the said L. M. and N. O. lately sold the said sum of £—— Consolidated £3 per Cent. Annuities, and by such sale realized the sum of £——, and they have also called in the said sum of £—— invested on mortgage security as aforesaid, and the said sums of £—— and £—— made together the sum of £—— out of which sum the said trustees have paid the sum of £—— for succession duty and for the expenses incidental to the winding-up of the trust, leaving the sum of £——: And whereas the said L. M. and N. O. have paid the sum of £—— (being one-third part of the said sum of £——) to the said A. B., the like sum of £—— (being one other third part thereof) to the said C. B., and the sum of £—— (being the remaining one-third part thereof) to the said G. H. and I. K. as the trustees of the said indenture of the —— day of ——, with the consent of the said D. E. and F., his wife, as the said several persons parties hereto of the first four parts do hereby acknowledge: And whereas all the income which has been received in respect of the trust funds since the decease of the said Y. B. has been divided between the persons entitled thereto as aforesaid as the parties hereto of the first four parts do hereby also acknowledge. NOW THIS INDENTURE WITNESSETH, that in consideration of the premises, the several persons parties hereto of the first four parts respectively hereby release the said L. M. and N. O., and each of them, and the former trustees of the said indenture of settlement of the —— day of —— and every of them, from all actions, claims, and demands whatsoever for or on account or in respect of the several trust funds and premises settled by the said indenture or the trust funds for the time being representing the same or the income thereof respectively, or for or on account or in respect of any act, deed, matter, or thing whatsoever, done or omitted to be done by the said L. M. and N. O., or either of them, or any former trustee or trustees of the same indenture, in or about the execution of the trusts and powers of the same indenture, or in anywise relating thereto.

Sale and calling in of trust funds, and payment of succession duty and expenses.

Distribution of residue.

That income has been duly paid.

Witnessing part.

Release.

In witness, &c.

No. VIII.

RELEASE *and* INDEMNITY *by* CESTUIS QUE TRUST *to retiring Trustees on the* APPOINTMENT *of* NEW TRUSTEES *of a* SETTLEMENT (*a*).

RELEASE AND INDEMNITY TO RETIRING TRUSTEES.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c., and C. his wife (*cestui que trust*), of the first part, D. B. of, &c., E. B. of, &c., and F. B. of, &c. (*other cestuis que trust*), of the second part, and G. H. of, &c., and I. K. of, &c. (*retiring trustees*), of the third part (*recite settlement under which G. H. and I. K. were trustees, and containing the usual trusts for husband and wife successively, and then for their children—power to appoint new trustees*): AND WHEREAS there have been issue of the said marriage three children, viz., the said D. B., E. B., and F. B., who have all attained the age of twenty-one years, and two others who died under that age and unmarried: AND WHEREAS the said G. H. and I. K., being desirous of being discharged from the trusts of the said indenture of settlement, L. M. of, &c., and N. O. of, &c., have been appointed trustees in their place by an indenture bearing even date with these presents: AND WHEREAS there have been several changes of investments of the trust funds settled by the said indenture, and the same now consist of or are represented by the following particulars, namely (*state particulars of investments*): AND WHEREAS some of the said investments are not in strict accordance with the trusts of the said indenture, but the same were

Parties.

Recite settlement.

Issue of marriage.

Retirement of old trustees and appointment of new trustees.

Dealings with trust funds.

That some of the investments are not authorized.

(*a*) Retiring trustees are not, as a general rule, entitled to a release from the *cestuis que trust*, but sometimes it is expressly stipulated that they shall have one, as where the dealings with the trust funds have not been regular, and the irregularities have been committed at the instance of the *cestuis que trust*, who are *sui juris*. Again, if besides the appointment of new trustees, some alteration is made in the trusts with the consent of the beneficiaries, such an arrangement may properly be treated as a winding up of the old trust, and the creation of a new one, and it would be proper to give the retiring trustees a release. An instance of such a case is, where the trustees of a settlement of real estate have made sales and purchases and interim investments, involving the keeping of accounts. If there is a re-settlement of the estate on the eldest son coming of age, the accounts should be submitted to him and his father, and a release given to the trustees.

Cases in which retiring trustees are entitled to a release.

RELEASE AND INDEMNITY TO RETIRING TRUSTEES.

made at the request of the said A. B. and C. his wife, and are approved of by the said D. B., E. B., and F. B.: AND WHEREAS the income of the trust funds has been duly and regularly paid to the said A. B. up to the date of these presents: AND WHEREAS it was part of the arrangement, on the retirement of the said G. H. and I. K. from the trusts of the said indenture, that such release and covenant for indemnity should be given to and entered into with them as are hereinafter expressed: NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and in consideration of the premises, the said A. B. and C. his wife, D. B., E. B., and F. B., hereby release the said G. H. and I. K., and each of them of and from all actions, claims, and demands whatsoever, for or on account or in respect of the trust funds and premises settled by the said indenture, and the trust funds from time to time representing the same, or the income thereof respectively, or for or on account or in respect of any act, deed, matter or thing whatsoever, done or omitted to be done by the said G. H. and I. K., or either of them, in or about the execution of the trusts and powers of the said indenture, or in anywise relating thereto, and in particular for or on account of some of the investments of the said trust funds not being authorized by the said indenture: AND the said A. B., D. B., E. B., and F. B. hereby jointly and severally covenant with the said G. H. and I. K., that they the said covenanting persons will at all times keep indemnified the said G. H. and I. K., and each of them, from and against all actions, claims, and demands whatsoever, which may be instituted against them or either of them by or on behalf of the said C. B. or any other person whomsoever, for or on account of any act, deed, matter, or thing whatsoever, done or omitted to be done by the said G. H. and I. K., or either of them, in or about the execution of the trusts and powers of the said indenture, or in anywise relating thereto, and in particular for or on account of such unauthorized investments having been made as aforesaid.

Payment of income.

Agreement for release and indemnity.

Witnessing part.

Release by father and mother and children to retiring trustees.

Covenant by father and children to indemnify retiring trustees against any claims by mother.

IN WITNESS, &c.

No. IX.

RECEIPT *for a* LEGACY *charged on* LAND (*a*).

RECEIPT FOR LEGACY.

I, A. B. of, &c., to whom a legacy of £—— is given by the will of X. Y., late of, &c., who died on the —— day of ——, 18—, and is thereby charged on the testator's real estate, hereby acknowledge and declare that I have received the said legacy of £—— from C. D. of, &c., the devisee of the said real estate, all interest thereon having been first duly paid.

Legatee acknowledges payment of legacy.

(Signed) A. B.

No. X.

RELEASE *of* LANDS *from a* LEGACY *charged thereupon by will.*

RELEASE OF LANDS FROM LEGACY.

TO ALL TO WHOM THESE PRESENTS SHALL COME, A. B. of, &c. (*releasor*), SENDS GREETING: WHEREAS S. H., late of, &c., by his will, dated the —— day of ——, gave and bequeathed the sum of £5,000 to the said A. B., and directed that the same should be charged on, and be payable primarily out of his real estate, and the said testator by his said will gave and devised all his real estate so charged as aforesaid unto the said C. D. (*Death of testator and probate of will*): AND WHEREAS the said legacy of £—— has not been paid: AND WHEREAS the said C. D., being about to sell the hereditaments described in the schedule hereto, being part of the testator's real estate, has

Parties.

Recite bequest of legacy and devise of lands charged therewith.

Death of testator and probate of will.

Agreement to release.

(*a*) If real estate is devised to A. charged with debts and legacies, A. can make a good title to a purchaser, and the latter is not bound to make any inquiry as to the application of the money. But if the real estate is charged with a legacy or several legacies, and not with debts, it is apprehended that in cases not coming within sects. 14, 15, and 16 of 22 & 23 Vict. c. 35, the devisee cannot make a good title without proving payment or a release. If the legacy is paid a simple receipt is sufficient, but if it is released without payment there should be a formal deed. Forms of both are given in the text.

Cases in which a purchaser of real estate charged with legacies is bound to see to their payment.

RELEASE OF LANDS FROM LEGACY.

requested the said A. B. to release the same from the said legacy, which he the said A. B. has agreed to do, being satisfied that the other real estate is of ample value as a security for the said legacy: NOW THESE PRESENTS WITNESS, that in consideration of the premises, THE said A. B. hereby releases the hereditaments described in the schedule hereto from the said legacy of £——, and all interest thereon and all claims and demands for or in respect of the same.

Release of lands from legacy.

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

No. XI.

BY EXECUTORS TO DEVISEE.

RELEASE *by* EXECUTORS *to* DEVISEE *of* REAL ESTATE *charged with* DEBTS *and* LEGACIES.

TO ALL TO WHOM THESE PRESENTS SHALL COME, A. B. of, &c., and C. D. of, &c. (*executors*), SEND GREETING (*recite will whereby real estate is given to E. F., charged with debts and legacies in aid of the personal estate, death of testator, and probate of his will*): AND WHEREAS all the funeral and testamentary expenses and debts of the said testator, and all the legacies given by his said will, have been paid and satisfied out of his personal estate as they the said A. B. and C. D. as such executors as aforesaid do hereby acknowledge, and they have therefore agreed to execute this release: NOW THESE PRESENTS WITNESS that the said A. B. and C. D. as such executors as aforesaid do hereby release all the real estate of the said X. Y., deceased, from all claims and demands for or in respect of the funeral and testamentary expenses and debts of the said testator, and the legacies given by his said will or any of them or any part thereof respectively.

Recital that debts and legacies have been paid out of personalty.

Executors release real estate.

IN WITNESS, &c.

No. XII.

RELEASE *of* WIFE'S *right to* DOWER, *in respect of all the* REAL ESTATE *to which her* HUSBAND *was entitled at his* DECEASE. RELEASE OF RIGHT TO DOWER.

TO ALL TO WHOM THESE PRESENTS SHALL COME, A. B. of, &c., widow (*releasor*), SENDS GREETING: WHEREAS C. B. late of, &c., died intestate, on the —— day of ——, 18—, leaving the said A. B., his widow, and E. F., his only son and heir at law: AND WHEREAS the said C. B. was at his death seised of freehold lands and hereditaments out of which the said A. B., his widow, is entitled to dower: AND WHEREAS the said A. B. has, at the request of the said E. F., agreed to release the said lands and hereditaments from her dower in the manner hereinafter expressed: NOW THESE PRESENTS WITNESS, that the said A. B., in consideration of her natural love and affection for the said E. F., hereby releases ALL the lands and hereditaments of or to which the said C. B. was seised or entitled at his decease of and from all the right and title to dower of her the said A. B., out of or in respect of the same, and all claims and demands relating thereto.

Recite will of testator.

That widow is entitled to dower.

Witnessing part.

Release of right to dower.

IN WITNESS, &c.

No. XIII.

RELEASE *of a* POWER *of* REVOCATION *and* NEW APPOINTMENT *contained in a* VOLUNTARY SETTLEMENT (*a*). RELEASE OF POWER.

TO ALL TO WHOM THESE PRESENTS SHALL COME, A. B. of, &c. (*releasor*), SENDS GREETING (*recite settlement*

Recite settlement.

(*a*) Powers are distinguished as follows:—(1) Appendant or appurtenant; (2) collateral or in gross; (3) simply collateral. Lord St. Leonards defines powers appendant or appurtenant as powers which strictly depend on the estate limited to the person to whom they are given; powers collateral or

Different kinds of powers.

RELEASE OF POWER.

whereby lands were conveyed by A. B. to use of A. B. for life, with remainder to C. B. his wife for life, with remainder to use of the children of A. B. and C. B. as tenants in common in fee simple, with power to A. B. to revoke the use and appoint the property to other uses): AND WHEREAS the said C. B. died on the —— day of ——: AND WHEREAS there have been two children of the said A. B. and C. his wife, namely, D. B. and E. B., both of whom have attained the age of twenty-one years: AND WHEREAS the said A. B. has not exercised the power of revocation and new appointment reserved to him by the said indenture of settlement, and he has now agreed to release the same in the manner hereinafter expressed: NOW THESE PRESENTS WITNESS, that the said A. B. hereby releases unto the said D. B. and E. B., and all other persons interested in the hereditaments comprised in the said indenture of settlement, the said power of revocation and new appointment reserved to the said A. B. in and by the said indenture as aforesaid, To the end and intent that the same hereditaments shall absolutely remain and be to the uses declared by the said indenture, freed and discharged from the said power of revocation and new appointment.

Death of settlor's wife.

That there are two children.

That settlor is desirous to release power of revocation.

Witnessing part.

Release of power.

IN WITNESS, &c.

in gross, as powers given to a person who had an interest in the estate at the execution of the deed creating the power, or to whom an estate is given by the deed, but which enable him to create such estate only as will not attach on the *interest* limited to him; and a power *simply* collateral, as a power to a person not having any interest in the land, and to whom no estate is given, to dispose of or charge the estate in favour of some other person. A power appendant or in gross could always be released, but not so, until the recent Acts, a power simply collateral. Sug. Pow. 7th ed. pp. 39—45. It is now provided by the Conveyancing Act, 1881, s. 52, that a person to whom any power, whether coupled with an interest or not, is given, may by deed release or contract not to exercise the same; and by the Conveyancing Act, 1882, s. 6, that a person to whom any power, whether coupled with an interest or not, is given, may by deed disclaim the power, in which case the power may be exercised by the other or others or the survivors or survivor of the others of the persons to whom it is given; and these enactments apply to powers created by instruments coming into operation either before or after the commencement of the Act.

Powers simply collateral may now be released.

No. XIV.

RELEASE *of* ACTIONS *on* PAYMENT *of* COSTS.

RELEASE OF ACTIONS ON PAYMENT OF COSTS.

TO ALL TO WHOM THESE PRESENTS SHALL COME, A. B. of, &c. (*releasor*), SENDS GREETING: WHEREAS two several actions have lately been commenced by the said A. B. in the High Court of Justice (Queen's Bench Division) against C. D. of, &c., and E. F. of, &c., for the printing and publication of certain libels against him the said A. B.: AND WHEREAS it hath been agreed between the parties to these presents, that the said C. D. and E. F. should pay to the said A. B. the sum of £—— for and in full satisfaction of all damages and costs suffered and incurred by the said A. B. on account of the said libels, and in and about the prosecution of the said actions, and that upon payment of the said sum of £——, the said actions and all further proceedings therein shall be wholly stayed and discontinued: NOW THEREFORE KNOW YE, and these presents witness, that in consideration of the said sum of £—— so paid to the said A. B. by the said C. D. and E. F. in full satisfaction as aforesaid, the receipt whereof is hereby acknowledged, the said A. B. doth hereby release and quit claim unto the said C. D. and E. F., and each of them, ALL and all manner of actions, causes of action, claims and demands whatsoever, which he the said A. B. now hath, or at any time hereafter can or may have, or, but for the execution of these presents, could or might have had against the said C. D. and E. F., or either of them, for or by reason or in respect of any matter or thing contained in the said libels as aforesaid, or for or by reason of any other matter or thing in anywise relating thereto: AND the said A. B. doth hereby consent and agree that the said actions shall henceforth cease and be determined.

Recite that actions had been commenced by releasor on account of libels.

Agreement to accept a sum in satisfaction of damage occasioned by the libels.

Release of actions, &c., on account of libels;

and agreement to determine actions.

IN WITNESS, &c.

PARTNERSHIP DEEDS.

Partnership Act, 1890.

THE law of partnership is now regulated by the Partnership Act, 1890 (*a*). The following is a summary of its principal provisions:—

Definition of partnership.

Partnership is the relation which subsists between persons carrying on a business in common with a view of profit. The receipt by a person of a share of the profits of a business is *primâ facie* evidence that he is a partner, but does not of itself make him a partner. Thus, a servant or agent who by agreement receives a share of the profits by way of salary, or the widow or child of a deceased partner who receives a part of the profits by way of annuity, or a person who lends money to a person in business on a contract in writing, and signed by or on behalf of all the parties thereto, that the lender shall receive a rate of interest varying with the profits, or shall receive a share of the profits, or a person receiving a part of the profits by way of annuity in consideration of the sale by him of the goodwill of the business, does not thereby become a partner (*b*).

Power of a partner to bind firm.

Every partner is an agent of the firm for the purpose of carrying on the business, and the acts of every partner who does any act for carrying on in the usual way business of the kind carried on by the firm, are binding on the other partners, unless the partner so acting has in fact no authority to act for the firm in the particular matter, and the person with whom he is dealing either knows that he has no authority, or does not know or believe him to be a partner (*c*). Every

(*a*) 53 & 54 Vict. c. 39.
(*b*) Sects. 1, 2.
(*c*) Sect. 5.

partner is liable jointly with the other partners for all debts and obligations incurred while he is a partner (*d*).

Partnership property.

All partnership property must be held and applied by the partners exclusively for the purposes of the partnership, and in accordance with the partnership agreement (*e*), and unless the contrary appears, property bought with money belonging to the firm will be deemed to have been bought on account of the firm (*f*). Where land has become partnership property, it is to be treated as between the partners and their respective heirs and personal representatives as personal estate (*g*).

Procedure against partnership property for partner's separate judgment debt.

A writ of execution will not issue against partnership property, except on a judgment against the firm. But the Court may, on the application of a judgment creditor of a partner, make an order charging the partner's interest in the partnership property and profits with the debt, and may appoint a receiver of his share of profits and of any other moneys coming to him as partner (*h*).

Rules as to interests and duties of partners, subject to special agreement.

Subject to any agreement to the contrary, the following rules apply: (1) All the partners share equally in profits and losses. (2) The firm must indemnify every partner in respect of liabilities in the ordinary and proper conduct of the business of the firm, or anything necessarily done for the preservation of its property. (3) A partner advancing money beyond his share of capital is entitled to interest at 5 per cent. per annum. (4) A partner is not entitled to interest on his capital. (5) Every partner may take part in the management of the business. (6) No partner is entitled to remuneration. (7) No person may be introduced as a partner without the consent of all. (8) Differences as to ordinary matters may be decided by a majority of the partners. (9) The partnership books are to be kept at the prin-

(*d*) Sect. 9.
(*e*) Sect. 20.
(*f*) Sect. 21.
(*g*) Sect. 22.
(*h*) Sect. 23.

cipal place of business, and every partner is to have access to them (*i*).

Retirement from partnership at will, and where partnership for a term has been continued over, continuance on old terms preserved.

Where no fixed term has been agreed on for the duration of the partnership, it may be determined by any partner by notice; and where a partnership entered into for a fixed term has been continued beyond the term, the rights and duties of the partners remain the same so far as is consistent with a partnership at will (*k*).

Partners are bound to render true accounts and full information to one another (*l*).

Rights of assignee of share in partnership.

An assignment by a partner of his share in the partnership does not entitle the assignee to interfere in the management or to require an account of the partnership transactions, but only to receive the assignor's share of profits (*m*).

Dissolution by death or bankruptcy or charge.

Subject to any agreement between the partners, the partnership is dissolved as regards all the partners by the death or bankruptcy of a partner, and it may be dissolved at the option of the other partners if any partner suffers his share of the partnership property to be charged for his separate debt (*n*).

Dissolution by Court; for what causes.

The Court may dissolve the partnership, if a partner is found lunatic or shown to be of unsound mind, or becomes in any other way permanently incapable to perform his part of the partnership contract, or has been guilty of conduct calculated to prejudicially affect the business, or wilfully or persistently commits a breach of the partnership agreement, or otherwise so conducts himself that it is not reasonably practicable for the other partners to carry on the business in partnership with him, or where the business is carried on at a loss, or whenever any other circumstances have arisen rendering it just and equitable that the partnership shall be dissolved (*o*).

Rights of persons dealing with firms against apparent members of firm.

Where a person deals with a firm after a change in its constitution, he is entitled to treat all apparent members of the firm as still being members, until he

(*i*) Sect. 24.
(*k*) Sects. 26, 27.
(*l*) Sect. 29.
(*m*) Sect. 31.
(*n*) Sect. 33.
(*o*) Sect. 35.

has notice of the change. A notice in the *London Gazette* is notice to persons who had not dealings with the firm before the date of the dissolution or change so advertised (*p*).

Continuing authority of partners for purpose of winding-up.

After a dissolution, the authority of each partner to bind the firm and the other rights and obligations of partners continue so far as is necessary to wind up the affairs of the partnership and to complete unfinished transactions but not otherwise (*q*).

Rights of partners as to application of partnership property on dissolution.

In settling accounts on a dissolution, losses are paid first out of profits, next out of capital, and lastly, if necessary, by the partners individually in the proportions in which they were entitled to share profits. And the assets of the firm are applicable, first, in paying the debts of the firm to persons not being partners; next, in paying to each partner rateably what is due to him for advances as distinguished from capital; next, in paying to him what is due to him in respect of capital; and the ultimate surplus is divisible among the partners in the proportion in which profits are divisible (*r*).

Special provisions still necessary to prevent winding-up, on death, &c., of partner.

The above enactments render superfluous some of the provisions which were formerly inserted as a common form in partnership deeds. It is still necessary where it is wished that on the death or retirement of a partner the partnership should go on as regards the others, to insert special provisions to that effect. One plan is to provide that the share of capital shall be taken at its value as ascertained by the last yearly balance sheet, and that some fixed sum by way of interest from that time up to the death or retirement shall be allowed in lieu of profits. This plan obviates the necessity for any new balancing of accounts; but it is open to this objection, that if there should have been any serious loss since the last stocktaking, the loss will fall on the continuing partners alone. Another plan is to give to the continuing partners the option of purchasing the share at a valuation, to be made on

Plan for ascertaining value of deceased partner's share, by reference to last yearly account,

or by valuation.

(*p*) Sect. 36.
(*q*) Sect. 38.
(*r*) Sect. 44.

the day of the death or retirement. It has been decided that a clause of this kind will be enforced, and that if the valuation cannot be made by the person and in the manner directed, the Court will ascertain the value (*s*).

Goodwill.

In framing any provision for determining the share of a deceased or outgoing partner, it should be stated whether anything is to be allowed for the goodwill.

(*s*) Denham *v.* Bradford, L. R. 5 Ch. 519.

No. I.

DEED *of* PARTNERSHIP *between* TWO PERSONS (*a simple form*). BETWEEN TWO PERSONS (*Short Form.*)

THIS INDENTURE, made the —— day of ——, 18—, BETWEEN A. B. of, &c. (*one partner*), of the one part, and C. D. of, &c. (*other partner*), of the other part: WITNESSETH that the said A. B. and C. D. hereby mutually covenant to become partners in the business of ——, upon and subject to the following conditions, namely:— Parties.

1. THE partnership shall commence on the —— day of ——, and shall continue until determined by six calendar months' notice, to be given by one partner to the other, or to be left at the place of business [*or* The partnership shall be for a term of —— years computed from the —— day of ——, 18—]. Duration of partnership.

2. THE name of the firm shall be ——, and the business shall be carried on at the premises No. —— (*describe the premises*), or at such other place as the partners shall from time to time agree on. Name of firm and place of business.

3. THE bankers of the firm shall be —— & Co. Bankers.

4. THE capital of the firm shall be £——. The said capital is at present represented by the stock in trade in and upon the said premises, which have been valued at £——, and the sum of £—— cash standing to the credit of the firm at the said bank, and which stock in trade and cash belong to the partners in equal shares. Capital.

5. THE profits and losses of the business shall be divided between the partners in equal shares (*a*). Profits and losses.

6. PROPER accounts shall be kept of all partnership transactions, and on the 31st day of December in every year, or as soon Yearly stock-taking.

(*a*) This precedent can be easily adapted to a case where the capital is found by the parties, and the profits are divided in unequal shares. But it should be borne in mind, that if the capital is found in different proportions to those in which profits are divided, there should be a provision allowing interest on capital.

BETWEEN TWO PERSONS. (*Short Form.*)

afterwards as possible, a balance-sheet shall be made out, showing the assets and liabilities of the firm, and what belongs and is due to each partner for capital and share of profits, and the same shall be signed by both partners, and when so signed shall be conclusive, except that if a manifest error shall be discovered therein within three calendar months after the signature thereof such error shall be rectified.

Monthly drawings.

7. EACH partner may draw the monthly sum of £—— out of the partnership cash on account of his share of profits for the current year, but if on taking the yearly account it shall appear that the monthly sums drawn out by either partner exceed his share of profits, he shall forthwith refund the excess.

Arbitration clause.

8. ALL matters in difference in relation to the partnership affairs shall be referred to two arbitrators, one to be appointed by each party [*or* to a single arbitrator] according and subject to the provisions of the Arbitration Act, 1889.

IN WITNESS, &c.

No. II.

BETWEEN TWO PERSONS.

DEED *of* PARTNERSHIP *between* TWO PERSONS (*another form*).

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*one partner*), of the one part, and C. D. of, &c. (*other partner*), of the other part: WITNESSETH, that the said A. B. and C. D. hereby mutually covenant to become and be partners in the trade or business of ——, upon and subject to the terms, conditions, and stipulations expressed in the following articles (that is to say):—

Witnessing part.

Mutual covenant to become partners.

Duration of partnership.

1. THE partnership shall be for the term of twenty-one years computed from the —— day of ——, 18—.

Title of firm.

2. THE firm and style of the partnership shall be —— & Co.

Place of business.

3. THE partnership business shall be carried on at or upon the leasehold premises being No. —, —— street, in the city of

——, held by the said A. B. and C. D. under a lease, dated the —— day of ——, at the yearly rent of £——, or at such other place as shall from time to time be agreed on by the said partners.

Bankers.

4. The bankers of the firm shall be Messrs. —— & Co., at ——, or such other bankers as shall be from time to time agreed on by the partners. Each partner shall be at liberty to draw cheques in the name of the firm.

Capital.

5. The capital of the firm shall consist of the sum of £——, to be brought in by the partners in the shares following, namely (*state the shares*), and to be made up as follows (that is to say), the implements and plant now used in the said business shall be deemed to be of the value of £——, and to be brought in by the said partners in the shares aforesaid, and the further sum of £—— shall be paid to the credit of the firm by the said partners in the shares aforesaid immediately after the execution of these presents.

Profits.

6. The profits of the business shall belong as to —— parts thereof to the said A. B., and as to the remaining —— part thereof to the said C. D., and they shall bear in the same proportion all losses arising from the said business.

Power to each partner to draw monthly sums.

7. Each partner may draw out of the partnership cash the monthly sum of £—— on account of his share of profits for the current year, and if on taking any yearly account it shall appear that the sums drawn out by him exceed his share of profits for that year he shall forthwith repay the excess.

Books of account to be kept.

8. Proper books of account shall be kept by the partners, and entries made therein of all such matters, transactions, and things as are usually written and entered in books of account kept by persons engaged in concerns of a similar nature (*a*).

Partners to give whole time to business.

9. Both partners shall devote their whole time and attention to the partnership business, and neither of them shall, directly or indirectly, be engaged in any other business.

Neither partner to discharge clerk or servant without consent of other.

10. Neither partner shall without the consent of the other discharge any clerk or servant in the employment of the firm except for flagrant misconduct.

(*a*) The partnership books must be kept at the place of business, and every partner has access to them. P. A. 1890, s. 24.

BETWEEN TWO PERSONS.

Not to give credit after notice to the contrary.

11. NEITHER partner shall lend any money or deliver on credit any goods belonging to the firm to any person whom the other partner shall by notice in writing have forbidden him to trust, and if either partner shall do so, he shall make good to the firm all loss arising thereby.

Not to release or compound debt.

12. NEITHER partner shall without the consent in writing of the other release or compound any debt owing to or claim of the firm, and if either partner do so, he shall, if required by the other, make good to the firm the full amount of such debt or claim.

Annual accounts.

13. ON the 31st day of December in every year during the continuance of the said partnership, a general account shall be taken up to the same 31st day of December, of the stock in trade, credits, property and effects, debts and liabilities of the said partnership, and every such annual account shall be entered in two books, and be signed in each such book by each partner, and after such signature each of them shall keep one of the said books, and shall be bound by such account, except that if any manifest error be found therein by either partner, and signified to the other within three calendar months after the same shall have been so signed by both of them, such error shall be rectified. Immediately after the signing of such account each partner may draw out his share of the profits as thereby appearing [subject, however, to the next article].

Reserve fund.

[14. IMMEDIATELY after taking such annual account, one tenth part of the profits for the past year shall be set apart as a reserve fund to meet future losses and extraordinary expenses, until the reserve fund shall amount to £——. The reserve fund shall be invested from time to time in securities agreed on by the partners, and the interest or income arising therefrom shall be deemed part of the profits of the said business and be divided accordingly. If the reserve fund after having been at its full amount shall be diminished, one tenth part of the annual profits shall again be added thereto until it reaches its full amount, and so on from time to time as occasion may require (*a*).]

(*a*) This will only be inserted when from the nature of the business it is thought necessary.

BETWEEN TWO PERSONS.

15. If the partnership shall be dissolved by the death or bankruptcy of a partner, or by reason of his having suffered his share to be charged under the Partnership Act, 1890, for his separate debt, or shall be dissolved by the Court under sect. 35 of the said Act on account of the lunacy, incapacity, or misconduct of a partner, then and in either of such cases the other partner shall be at liberty to purchase the share of the partner whose death, bankruptcy, lunacy, incapacity, or misconduct shall have caused the dissolution (hereinafter referred to as "the outgoing partner") in the partnership property upon giving to the outgoing partner or his legal personal representative, trustee, or committee (as the case may require) a notice in writing to that effect at any time within three calendar months from the date of the dissolution, such purchase to take effect as from the date of the dissolution.

On death or bankruptcy of a partner the other partner may purchase his share.

[16. Either partner may retire from the partnership at the end of any year of the partnership term, upon giving to the other partner or leaving at the place where the business is carried on twelve calendar months' previous notice in writing in that behalf. In such case the other partner shall be at liberty to purchase the share of the retiring partner (hereinafter included in the term "the outgoing partner") in the property of the firm upon giving to him or leaving at the said place of business a notice in writing to that effect at any time before the determination of the partnership by reason of the first-mentioned notice (*b*).]

Power to other party to retire, in which case his share may be purchased by the other.

(*b*) The above clause will be inserted only when expressly stipulated for. Sometimes the following clause will meet the intention of the parties:—

If upon taking any such annual account as aforesaid it shall appear that the partnership business has not been carried on during the then preceding year so as to produce profit after allowing to each partner interest after the rate of £5 per cent. per annum on the amount of his capital for the time being in the said business, it shall be lawful for either partner, at any time within one calendar month from the time of the taking such account, to give a notice in writing to the other partner of his desire that the said partnership shall determine, or to leave such notice at the place where the partnership business shall for

Power to either partner to determine partnership in the event of no profits.

BETWEEN TWO PERSONS.

Mode of ascertaining value of share on purchase.

17. The sum to be paid for the purchase of the share of an outgoing partner under the foregoing provisions shall be the net value thereof after providing for the debts and liabilities of the firm on the day of the dissolution of the partnership, and if the parties shall be unable to agree as to the value thereof, the same shall be ascertained by two indifferent persons, one to be appointed by the vendor or vendors, and the other by the purchaser, or by an umpire to be appointed by the two valuers before they proceed to business, and if either party shall fail to appoint a valuer for the space of fourteen days after being called on so to do by the other party, or shall appoint a valuer who shall refuse to act, the valuer appointed by the other party shall make a final valuation alone. The sum of money ascertained to be the value of the said share shall be paid by the purchaser to the vendor or vendors by four equal instalments, at the expiration of six, twelve, eighteen, and twenty-four calendar months respectively, from the dissolution of the partnership, with interest for the same, or the instalments for the time being remaining unpaid, after the rate of £5 per cent. per annum, and shall be secured by the bond of the purchaser, who shall also by the same or another bond indemnify the vendor or vendors and the estate of the outgoing partner against the debts and liabilities of the firm, and the vendor or vendors shall at the request and cost of the purchaser do and execute all acts, deeds, and things necessary or proper for vesting in him the share purchased by him as aforesaid and for enabling him to get in the outstanding credits and effects of the firm.

Purchase-money to be paid by instalments.

Nothing to be allowed for goodwill.

18. In ascertaining the sum of money to be paid for the purchase of the share of an outgoing partner as aforesaid nothing shall be allowed for the goodwill of the business (*c*).

Dissolution may be advertised in *London Gazette*, &c.

19. Upon the dissolution of the partnership during the joint lives of the partners, either of them shall be at liberty to advertise the dissolution in the *London Gazette* and other papers, and to send notices thereof to customers and others.

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the time being be carried on, and in such case the partnership shall cease and determine immediately upon the giving or leaving of such notice.

(*c*) If the goodwill is to be paid for it should be stated.

BETWEEN TWO PERSONS.

Arbitration clause.

20. If, during the continuance of the said partnership, or at any time afterwards, any difference shall arise between the said partners, or their respective representatives, in regard to the construction of any of the articles herein contained, or to any division, act, or thing to be made or done in pursuance hereof, or in regard to the rights or liabilities of either party hereunder, or to any other matter or thing relating to the said partnership or the affairs thereof, such difference shall be forthwith referred to two arbitrators, one to be appointed by each party in difference [*or* to a single arbitrator] according and subject to the provisions of the Arbitration Act, 1889.

In witness, &c.

No. III.

BETWEEN TWO PERSONS IN UNEQUAL SHARES.

DEED *of* Partnership *between* Two Persons, *where* one *finds the* whole *of the* Capital *to commence with, and the* Profits *are divided in* Unequal Shares—Special Provision *for the* Widow *or* Children *of a deceased Partner.*

Parties.

Recital that one partner has for some time carried on business.

Agreement to admit other partner.

Arrangement that stock in trade, &c., shall be taken by firm at valuation.

THIS INDENTURE, &c. (*date and parties*): Whereas the said A. B. has for some years carried on the business of —— upon certain leasehold premises in —— street in the town of ——, held by him for a term of years which will expire on the —— day of ——, 18—, at the yearly rent of £——: And whereas the said A. B. has agreed to admit the said C. D. into partnership with him upon the terms and conditions hereinafter expressed: And whereas it is part of the arrangement that the plant and stock in trade in and about the said premises shall be taken by the said partnership at the sum of £——, at which the same have been valued; and that the said A. B. shall pay into the —— Bank to the partnership account the sum of £——, and that the said sums of £—— and £——, making together the sum of £——, shall be considered as capital brought in to the said business by the said A. B., and shall be credited to him in

BETWEEN TWO PERSONS IN UNEQUAL SHARES.

the partnership books accordingly: AND WHEREAS in performance of the said agreement the said A. B. has before the execution of these presents paid the sum of £—— into the said —— Bank to the partnership account: NOW THIS INDENTURE WITNESSETH, &c. (*covenant to become partners as in Precedent No. II.*, p. 728).

Payment by one partner of cash as capital to firm.

Witnessing part.

1, 2. (*Duration of partnership, and name of firm; see Precedent No. II.*)

Place of business.

3. THE business shall be carried on at the premises No. —— (*describing them*): and the firm shall be considered tenants of the said premises to the said A. B., at the yearly rent of £——, payable half-yearly, on the —— day of ——, and the —— day of —— in every year, and they shall pay all rates and taxes payable in respect of the said premises, and shall keep the same in good repair and insured against loss or damage by fire in the full value thereof. The tenancy may be determined by the firm on the —— day of —— in any year by six calendar months' notice, but the said A. B. shall not determine the tenancy so long as the firm shall desire to carry on its business there.

4. THE bankers, &c. (*as in Precedent No. II., Art.* 4).

Capital.

5. THE present capital of the partnership is the sum of £——, made up of the said plant and stock in trade, and the said sum of £—— cash standing to the account of the firm at the said bank, the whole of which capital has been brought in by the said A. B., as hereinbefore is mentioned.

Profits.

6. THE profits and losses of the said business shall be divided between the partners as follows, namely, the said A. B. shall be entitled to and shall bear three equal fourth parts thereof, and the said C. D. the remaining one equal fourth part thereof. Whenever the one fourth share of profits belonging to the said C. D. shall in any year exceed £——, he shall leave the excess in the said business as so much capital brought in by him, until by that means his capital shall amount to £——.

Interest on capital.

7. EACH partner shall receive interest after the rate of £5 per cent. per annum on the amount of his capital for the time being in the said business, and such interest shall be allowed before any division of profits is made.

8 to 19. (*As in Precedent No. II.*)

Provisions for giving one of the partners

20. IF the said A. B. shall die during the continuance of the said partnership, the said C. D. shall have the option of pur-

BETWEEN TWO PERSONS IN UNEQUAL SHARES.

chasing from his representatives the messuage in —— aforesaid, where the said business is carried on, for all the then residue of the term of fourteen years therein now vested in the said A. B., the price to be as follows (that is to say), If the said A. B. shall die on or before the —— day of —— next, then the price to be £100, but if he shall die at any subsequent period, then the price to fall and be reduced £5 at the expiration of every clear period of six calendar months, during which the said A. B. shall survive the said —— day of —— next, but no fall or reduction shall be made on account of any period less than six calendar months, the purchaser to take subject to the payment of the yearly rent of £—— reserved by the lease of the same premises, and to the observance and performance of the covenants and conditions in the same lease contained, and on the lessee's part to be observed and performed; provided, however, that the said C. D. shall signify his intention of becoming the purchaser of the said messuage to the representative of the said A. B. within twelve calendar months next after the decease of the said A. B., and the said C. D. shall, without requiring the production of the lessor's title, accept an assignment of the said premises for all the then residue of the said term subject as aforesaid, and shall enter into the usual covenant for the payment of the said rent, and the observance and performance of the said covenants and conditions, and for indemnifying the said representatives and their estate and effects, and also the estate and effects of the said A. B. therefrom, such assignment and covenant to be prepared by and at the expense of the said C. D.

the option of purchasing lease.

Special provisions in case of death of either partner, leaving a widow or children.

21. If either partner shall die during the continuance of the said partnership, leaving a widow, child or children him surviving, the surviving partner shall, during the remainder of the said term of fourteen years hereby appointed for the continuance of the said partnership, if such surviving partner and also the widow or a child or children of the deceased partner shall so long live, pay to the executors or administrators of the deceased partner (in addition to any other moneys to which they will be entitled under the foregoing articles) the annual sum of £——, by equal quarterly payments, the first of such payments to be made at the end of three calendar months next after the decease of the partner so dying as aforesaid.

22. (*Arbitration clause—see Precedent No. II., Art.* 20.)

No. IV.

BETWEEN FOUR PERSONS.

DEED *of* PARTNERSHIP *between* FOUR PERSONS.

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*one partner*), of the first part, C. D. of, &c. (*another partner*), of the second part, E. F. of, &c. (*another partner*), of the third part, and G. H. of, &c. (*another partner*) of the fourth part: WITNESSETH, that the said A. B., C. D., E. F., and G. H., hereby mutually covenant and agree to become partners in the trade or business of ——, upon and subject to the terms, conditions, and stipulations expressed in the following articles (that is to say):—

Mutual covenants.

1, 2, 3. (*Same as in Precedent No. I.*)

Bankers.

4. The bankers of the firm shall be ——, or such other bankers as the partners shall from time to time agree on. All cheques shall be signed by at least two partners.

Capital.

5. THE capital of the firm shall be £——, made up and brought in as follows (that is to say): The plant and stock in trade in and upon the said premises in —— street belonging to the said A. B. and C. D., and which have been valued at £——, shall be taken to and become the property of the firm hereby constituted, and each of them the said A. B. and C. D. shall be credited in respect thereof with the sum of £——, as so much capital brought in by him: The said E. F. shall forthwith pay the sum of £—— to the account of the said firm at the said bank, and shall in respect thereof be credited with £—— as so much capital brought in by him: And the said G. H. shall bring in the sum of £—— out of his share of profits as hereinafter is provided.

Interest on capital.

6. EACH partner shall receive interest after the rate of £5 per cent. per annum on the amount of his capital for the time being in the said business.

Profits.

Losses.

7. THE profits of the business shall belong to the partners in the following shares, namely (*state the proportions*): And they shall bear in the same proportion all losses arising in the business.

Drawings by partners.

8. EACH partner shall be at liberty to draw out of the partnership cash on account of his share of profits for the current year,

as to the said A. B. the monthly sum of £——, as to the said C. D. the monthly sum of £——, as to the said E. F. the monthly sum of £——, and as to the said G. H. the monthly sum of £——, and if the monthly sums drawn out by any partner in any one year shall exceed his share of profits for that year as appearing by the yearly account, the excess shall be forthwith repaid by him to the firm.

9. Proper books of account, &c. (*as in Precedent No. II., Art.* 8).

Mutual obligations of partners.

10. All the partners shall devote their whole time and attention to the partnership business, and no partner shall be engaged directly or indirectly in any other business.

No partner to give credit, if forbidden by other,

11. No partner shall lend any money or deliver upon credit any goods belonging to the firm to any person whom the other partners or partner shall by notice in writing have forbidden him to trust, and if any partner shall do so, he shall make good to the other partners all loss arising thereby.

nor to release or compound debts, &c.,

12. No partner shall release or compound any debt owing to or claim of the firm without the consent in writing of the other partners or partner, and if any partner shall do so, he shall at the request of the other partners, or any or either of them, pay to the firm the full amount of such debt or claim.

nor to discharge clerks.

13. No partner shall without the consent of the other partners or partner discharge a clerk or servant, except for flagrant misconduct.

Yearly account.

14. On the 31st day of December in every year during the continuance of the partnership, &c. (*same as Precedent No. I., Art.* 13, *substituting "four books" for "two books," and "all the partners" for "both partners" where necessary*).

Each partner to be at liberty to draw out his share after yearly account.

15. After the signing of the annual account each partner may draw out his share of the profits as thereby appearing, save and except that so long as any part of the said sum of £—— hereby agreed to be brought in as capital by the said G. H. shall remain unpaid, the said G. H. shall receive out of his share of profits for such year the sum of £—— only, and the surplus of his share shall remain in the said business until by this means the whole of the said sum of £—— shall have been brought in.

Power to any partner to retire.

16. Any partner shall be at liberty to retire from the firm at

BETWEEN FOUR PERSONS.

the end of any year of the term, upon giving to the other partners or partner, or leaving at the place where the business is carried on, twelve calendar months' previous notice in writing in that behalf (*a*).

17. If a partner shall die or become bankrupt, the partnership shall be dissolved so far as regards that partner only; and if a partner shall suffer his share of the partnership property to be charged under the Partnership Act, 1890, for his separate debt, the partnership may at the option of the other partners be dissolved so far as regards that partner only: And if the partnership shall be dissolved by the Court under sect. 35 of the said Act on account of the lunacy, incapacity, or misconduct of a partner, the dissolution shall take effect so far only as regards that partner unless the Court shall otherwise determine. A partner as against whom the partnership shall be dissolved as aforesaid is hereinafter referred to as an "expelled partner."

Provision for expulsion of partner in certain events.

[17A. (*The following may be substituted for Article* 17 *if desired.*) If any partner shall make, draw, accept, or indorse any bill of exchange or promissory note, or give any security in the name of the firm (except it be done on account of the partnership business, and in the *bonâ fide* carrying on of the same), or shall suffer his share of the partnership property to be charged under the Partnership Act, 1890, for his separate debts, or shall fail to account for money received by him in respect of any partnership transaction after being required so to do by the other partners or any of them, or shall act in other respects contrary to the good faith which ought to be observed between partners, or shall become incapable by reason of lunacy or otherwise to take his part in the management of the partnership business, then and in either of such cases the other partners may, by notice in writing given to him or (if he shall be found a lunatic by inquisition) to his committee, expel him from the partnership as from the date of the notice, but so that if the expulsion shall be on account of any breach of duty the notice shall be given within three calendar months after the discovery thereof. And if any question shall arise whether a case has happened to authorize the exercise of this power, such question shall be referred to arbitration under the power in that behalf hereinafter contained.]

(*a*) This clause will be inserted only when stipulated for.

18. If any partner shall retire or be expelled from the partnership as aforesaid, or shall become bankrupt, he shall be deemed to have ceased to be a partner on the day of the date of such retirement, expulsion, or bankruptcy as the case may be, and the continuing partners or partner shall be at liberty to advertise the dissolution of the partnership as regards the late partner in the *London Gazette* and elsewhere, and to sign the name of the late partner to the notice of dissolution.

On retirement, &c. of partners notice of dissolution to be inserted in *Gazette*.

19. Upon the death of any partner, or upon any person ceasing to be a partner by reason of his retirement, expulsion, or bankruptcy as aforesaid, the share of such deceased or outgoing partner in the partnership business and in the stock in trade, credits, and effects thereof, shall, as from the time of his death or his ceasing to be a partner as aforesaid, go and belong to and be purchased by the remaining partners or partner, and if more than one in equal shares [*or* in shares proportionate to their then shares in the business], and they or he shall take upon themselves or himself all the partnership debts and liabilities as from the same date, and the partnership shall be continued between the said remaining partners, if more than one, under the provisions of these presents: Provided always, that if the surviving or continuing partners or partner shall, within six calendar months from the death of the late partner or the time when he shall cease to be a partner as aforesaid, give to his personal representative, trustee, or committee, or to the late partner himself (as the case may require), a notice in writing stating the intention of the surviving or continuing partners or partner to wind up the partnership affairs, instead of purchasing the share of the late partner as aforesaid, or leave a notice in writing to that effect at the place where the partnership business shall be carried on, then and in such case the partnership affairs shall be wound up as if the partnership had determined by effluxion of time.

Upon death, &c., of partner his share to belong to other partners, unless they shall within six months give notice of their intention not to take same.

20. (*If it is intended that the share of a deceased partner shall be ascertained by the last annual stock-taking.*) The surviving or continuing partners or partner, succeeding to and taking the share of a late partner under the last preceding article, shall pay to his personal representative, or trustee or committee, or to the late partner himself, as the case may require, such sum of

Provision for ascertaining share of deceased or outgoing partner by reference to last annual stock-taking.

BETWEEN FOUR PERSONS.

money as is next hereinafter mentioned (that is to say): If the late partner shall have died or ceased to be a partner before the 31st day of December next, then a sum of money equal to the capital brought in by him into the partnership as hereinbefore mentioned, together with interest on the same sum of money after the rate of £—— per cent. per annum, computed from the commencement of the partnership until the day of his death, or of his ceasing to be a partner as aforesaid, such interest to be in lieu of any share of profits during that period: If the late partner shall have died or ceased to be a partner on the 31st day of December in any year, then such a sum of money as by the annual account taken under Article 14 shall be found to be the net amount or value of the said share on the same 31st day of December: And if the late partner shall have died or ceased to be a partner on any day later than the 31st day of December next, and not being any subsequent 31st day of December, then such a sum of money as by the annual account taken under Article 14 shall be found to be the net amount or value of the said share on the 31st day of December immediately preceding his death, or the day of his ceasing to be a partner as aforesaid, with interest on the same sum of money after the rate of £—— per cent. per annum, computed from the same 31st day of December up to the day of his death or of his ceasimg to be a partner as aforesaid, such interest to be in lieu of any share of profits during the same period. The interest payable under this Article in lieu of profits shall be paid on demand, and the principal money payable under this Article shall be paid by four equal instalments, at the expiration of six, twelve, eighteen, and twenty-four calendar months respectively, computed from the death of the late partner, or from the time of his ceasing to be a partner as aforesaid, with interest on the amount for the time being remaining unpaid after the rate of £5 per cent. per annum, computed from the same time. The surviving or continuing partners or partner shall give their or his bond for securing the payment of the said principal money by such instalments and with such interest as aforesaid to the person or persons entitled thereto, and also for indemnifying him and them from the partnership debts and liabilities; and such person or persons shall, at the request and cost of the surviving or continuing partners or partner, execute and do all such acts, deeds, and

things, if any, as shall be necessary or proper for vesting the said share in them or him, and for enabling them or him to collect and get in the partnership credits and effects.

Share of deceased or outgoing partner to be ascertained by valuation.

20A. (*If it is intended that there shall be a new stock-taking to ascertain the share of the deceased or outgoing partner, the following will be substituted for Article* 20 *above.*) Upon the death of a partner, or upon a person ceasing to be a partner as aforesaid, the sum to be paid for his share in the property of the partnership shall be the net value of such share on the day of his death or of his ceasing to be a partner as aforesaid, after providing for the debts and liabilities of the firm, and so that in estimating such value the goodwill of the business shall not be taken into account (*a*). And if the parties shall be unable to agree as to the net value of the said share, the same shall be ascertained by two indifferent persons, one to be appointed by each party, or by an umpire to be appointed by the two valuers before they proceed to business; and if either party shall fail to appoint a valuer for the space of fourteen days after being called on so to do by the other party, or shall appoint a valuer who shall refuse to act, the valuer appointed by the other party shall make a final valuation alone. The sum of money ascertained as the net value of the said share shall be paid by four equal instalments, &c. (*as in the above clause No.* 20, *to the end*).

Questions of management to be decided by a majority of partners.

21. All questions which may arise during the continuance of the said partnership touching the conduct or management of the partnership affairs, including the employment and dismissal of clerks and servants, the giving of credit, and the compounding of debts and claims, shall be decided (in case there shall be three or more partners for the time being) by the majority in number of the partners.

Arbitration clause.

22. If any difference shall arise between the partners for the time being, or their respective representatives, or any other persons interested under these presents, in regard to the construction of these presents, or to any act or thing to be done in pursuance hereof, or to any other matter or thing relating to the said partnership or the affairs thereof, then (subject to the last preceding Article) the matter in difference shall be referred to

(*a*) If the goodwill is to be paid for, it should be stated.

BETWEEN FOUR PERSONS.

two arbitrators, one to be chosen by each party in difference [*or* to a single arbitrator] according and subject to the provisions of the Arbitration Act, 1889.

In witness, &c.

No. V.

BETWEEN BREWERS.

DEED *of* Partnership *between* Brewers, *on the taking in of a* New Partner. Usual Clauses, *including a* Provision *enabling either* Partner *to* nominate *by Will a* Son *to* succeed *him* (*a*).

Parties.

THIS INDENTURE, made the —— day of ——, Between A. B. of, &c. (*one partner*), of the first part, C. D. of, &c. (*other partner*), of the second part, and E. F. of, &c. (*other partner*), of the third part: Whereas the said A. B. and C. D. have for some time past carried on the business of brewers and maltsters at ——, and it was lately agreed between them and the said E. F. that the said E. F. should join them in the said business as from the 31st day of December last: And whereas on the 31st day of December last, the property and assets of the said A. B. and C. D. as such partners as aforesaid consisted of, 1st, the freehold and leasehold houses and premises mentioned and described in the schedule hereto, subject to the mortgages affecting the same also mentioned in the said schedule, and which freehold and leasehold houses and premises subject as aforesaid have been valued at £——; 2ndly, the stock in trade and effects in the nature of personal chattels, an inventory whereof has been furnished to the said E. F., and which are valued at £——; and 3rdly, the book debts owing to the said A. B. and C. D., and which book debts, after allowing for bad or doubtful ones, are estimated at £——: And whereas the debts and liabilities of the said A. B. and C. D. (other than

Recitals. Agreement by present partners to take in a new one.

Particulars of property and assets of present partners.

Amount of liabilities.

(*a*) This deed will require a common deed stamp, unless the book debts of the old firm are to be taken by new firm, in which case it is apprehended that this deed will have to bear an *ad valorem* stamp on the sum paid by the new partner for one-fifth of the book debts so taken over.

mortgage debts) amount to £—— or thereabouts: AND WHEREAS it was part of the arrangement between the parties hereto that the said E. F. should purchase from the said A. B. and C. D. one fifth part of the said freehold and leasehold premises, subject to the mortgages affecting the same, for the sum of £——, and one fifth part of the said stock in trade and effects in the nature of personal chattels for the sum of £——, to the intent that the same might be brought by him into the new partnership: [AND it was also part of the said arrangement that the book debts owing to the said A. B. and C. D. should become part of the property of the new firm, and that the said E. F. should pay to them the sum of £——, being one fifth part of the estimated amount thereof:] AND WHEREAS in part pursuance of the said agreement the said E. F. has before the execution of these presents paid or secured the payment to the said A. B. and C. D. of the said sums of £——, [£——,] and £——, making together £——: AND WHEREAS in further pursuance of the said agreement, by an indenture bearing even date with these presents, the said freehold and leasehold premises have been conveyed and assigned so as to become vested in the said A. B., C. D., and E. F., as part of the property of the new partnership, but subject to the said mortgages affecting the same: AND WHEREAS in further pursuance of the said agreement, the said stock in trade and effects in the nature of personal chattels have been delivered to the said A. B., C. D., and E. F., and they have taken possession thereof: NOW THIS INDENTURE WITNESSETH, that in consideration of the premises, the said A. B., C. D., and E. F. hereby mutually covenant to become and be partners in the trade or business of brewers and maltsters upon and subject to the conditions expressed in the following Articles:—

Agreement that incoming partner should purchase a share of freehold and leasehold property and stock in trade,

and payment by him of purchase-money.

Conveyance and assignment of freehold and leasehold property so as to vest in new firm,

and delivery of personal chattels.

1, 2, 3. (*See Precedent No. II., Articles* 1, 2, 3.)

4. THE bankers of the firm shall be ——. All cheques shall be signed by at least two of the partners.

Bankers.

5. THE said freehold and leasehold premises and the said stock in trade and effects in the nature of personal chattels, late the property of the said A. B. and C. D., [and the book debts owing to the said A. B. and C. D.,] shall be the property of the firm hereby constituted. The said A. B. shall be credited in the partnership books with the sum of £—— (being two fifth

Capital.

BETWEEN BREWERS.

parts of the net value of the said property) as so much capital brought in by him; the said C. D. shall be credited with a like sum of £—— (being two other fifth parts thereof) as so much capital brought in by him, and the said E. F. shall be credited with the sum of £—— (being the remaining one fifth part thereof) as so much capital brought in by him. Each partner shall be entitled to interest after the rate of £5 per cent. per annum on the amount of his capital for the time being in the said business.

6. The book debts owing to the old firm of A. B. and C. D. shall be received by them for their own use, and they shall thereout or otherwise pay and satisfy all the debts and liabilities of the old firm other than the said mortgage debts, and shall keep indemnified therefrom all the property of the new firm (*a*).

Profits and losses.

7. The profits of the said business shall belong as to two equal fifth parts thereof to the said A. B., as to two other equal fifth parts thereof to the said C. D., and as to the remaining one equal fifth part thereof to the said E. F., and they shall bear in the same proportion all losses arising from the business.

8. (*Books of account, see Precedent No. II., Art.* 8.)

9 to 16. (*Same as Articles* 10 *to* 17 *in Precedent No. IV.*)

Either party may nominate a son to succeed him.

17. Each partner may by will nominate one of his sons to succeed on his death to his share of the partnership and the capital and future profits thereof, and the person so nominated shall have the option of succeeding to the same share upon signifying such option to the surviving partner or partners within six calendar months next after the death of the testator, and the person succeeding as aforesaid shall be and become a partner in the concern in the room and in respect of the share of the testator upon the same terms and conditions and in the same manner as the testator if living would have been and remained a partner therein, or as near thereto as the differences of circumstances will admit, and he shall if required so to do execute a proper deed or deeds, binding himself to observe the said terms and conditions accordingly. But if the person so nominated as aforesaid shall not signify his option to succeed to

(*a*) If the book debts are taken to by the new firm, the first part of Article 6 will be omitted, and the article will stand thus: The said A. B. and C. D. shall pay and satisfy, &c.

such share as aforesaid within six calendar months after the death of the testator, then and in such case he shall be deemed to have declined to succeed thereto, and the nomination made by the will of the testator shall be void, and of no effect.

If nominee takes no active part in management, allowance to be made to other partners.

18. If any person admitted into the partnership under Article 17 shall be unable or unwilling to take an active part in the management of the business, then and in either of such cases the other partner or partners may take upon himself or themselves the entire management of the said business, and in such case such annual sum shall be allowed to the last-mentioned partner or partners for his or their additional trouble out of the share of the admitted partner in the profits of the said business as shall be agreed on between the partners, or (in case of differences) shall be determined by arbitration under the provision in that behalf hereinafter contained.

Upon the death of partner without having nominated successor, or upon retirement, &c., share to go to other partners.

19. If any partner shall die without having nominated a son to be his successor as aforesaid, or if the person so nominated shall decline to succeed to his share as aforesaid [or if any partner shall cease to be a partner by reason of his retirement, expulsion, or bankruptcy as aforesaid], then and in such case the share of the deceased partner [so dying or ceasing to be a partner as aforesaid] shall as from the time of his death [or of his ceasing to be a partner] go and belong, &c. (*as in Precedent No. IV., Art.* 19).

Provision for ascertaining value of share.

20. The surviving or continuing partners or partner succeeding to the share of a deceased or retiring or expelled or bankrupt partner as aforesaid shall pay, &c. (*as in Precedent No. IV., Articles* 20 *or* 20A).

21, 22. (*Same as Precedent No. IV., Articles* 21, 22.)

In witness, &c.

The Schedule above referred to.

No. VI.

CONVEYANCE OF FREEHOLDS AND LEASEHOLDS TO NEW FIRM.

CONVEYANCE *by the* OLD PARTNERS *in a* BREWERY BUSINESS *to* THEMSELVES *and a* NEW PARTNER *of the* FREEHOLD *and* LEASEHOLD *property of the* FIRM, *to accompany the last Precedent* (*a*).

Parties.

THIS INDENTURE, made the —— day of ——, 18—, BETWEEN A. B. of, &c., and C. D. of, &c. (*old partners*), of the one part, and E. F. of, &c. (*new partner*), of the other part:

Recite agreement by old partners to admit new partner to a share.

WHEREAS the said A. B. and C. D. have for some time carried on the business of brewers and maltsters in partnership under the firm or style of —— & Co., and they have agreed to admit the said E. F. into the said partnership on the terms (among other things) that the said E. F. shall be entitled to one fifth part of the profits thereof:

That freehold and leasehold property in schedule belong to old partners, subject to mortgages.

AND WHEREAS the freehold and leasehold messuages, lands, and hereditaments specified in the schedule hereto are part of the partnership property of the said A. B. and C. D., and the same are subject to the mortgages mentioned in the said schedule, whereon the principal sum of £—— is now owing, all interest thereon having been paid up to the date of these presents:

Agreement that new partner shall purchase one fifth part of property, and that entirety should be conveyed to old and new partners.

AND WHEREAS it is part of the arrangement between the parties hereto that the said E. F. shall purchase one equal fifth part of the said freehold and leasehold premises, subject to one fifth part of the mortgage debts affecting the same, for the sum of £——, and that the entirety of the said freehold and leasehold premises should be conveyed and assigned so as to vest in the said A. B., C. D., and E. F. as part of the property of the new partnership:

Witnessing part.

NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement in this behalf, and in consideration of the sum of £—— paid by the said E. F. to the said A. B. and C. D. before the execution of these presents (the receipt whereof the said A. B. and C. D. hereby acknowledge),

Old partners convey and assign freehold and leasehold property to themselves and new partner.

THE said A. B. and C. D., as beneficial owners, hereby convey and assign unto the said A. B., C. D., and E. F., ALL AND SINGULAR the freehold and leasehold messuages, lands, and hereditaments described in the schedule

(*a*) This deed will bear an *ad valorem* stamp for the sum paid by E. F *plus* one fifth part of the amount of the mortgage debt.

hereunder written, To HOLD the same as to the said freehold hereditaments unto and to the use of the said A. B., C. D., and E. F. in fee simple, and as to the said leasehold hereditaments unto the said A. B., C. D., and E. F. for the unexpired residue of the several terms of years subsisting therein respectively, and as to all the said premises as part of the partnership property of the new firm; subject as to the hereditaments affected thereby to the mortgages mentioned in the said schedule, and subject also as to the said leasehold hereditaments to the rents, covenants, and conditions reserved by and contained in the leases under which the same are respectively holden, and by and on the part of the lessees to be paid, observed, and performed.

CONVEYANCE OF FREEHOLDS AND LEASEHOLDS TO NEW FIRM.

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

No. VII.

DEED *of* PARTNERSHIP *between* SOLICITORS (*a*).

BETWEEN SOLICITORS.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c., solicitor (*one partner*), of the one part, and C. D. of, &c., solicitor (*other partner*), of the other part: WHEREAS the said A. B. has for many years carried on the business of a solicitor at —— aforesaid, and he has agreed to take the said C. D. into partnership in consideration of a premium of £——, to be paid by the said C. D. on the terms and conditions hereinafter appearing: AND WHEREAS the said C. D. has before the execution of these presents paid to the said A. B. the sum of £—— by way of premium pursuant to the said agreement, as he the said A. B. doth hereby acknowledge: NOW THIS INDENTURE WITNESSETH, that the said A. B. and C. D.

Parties.

Recite agreement by one to take other into partnership.

Witnessing part.

(*a*) This deed will require an *ad valorem* stamp of 10*s.* per £100, in respect of the premium.

BETWEEN SOLICITORS.

hereby mutually covenant and agree to become and be partners in the profession or business of solicitors upon and subject to the terms and conditions expressed in the following articles (that is to say),—

Mutual covenants to become partners.

Duration of partnership.

1. THE said partnership shall continue for the term of —— years, computed from the —— day of ——: [PROVIDED NEVERTHELESS (*b*), that if the said A. B. shall be desirous of determining the said partnership, and of such his desire shall give —— calendar months' notice in writing to the said C. D., or leave such notice at the office in which the business of the partnership shall for the time being be carried on, then at the expiration of such notice the said partnership shall cease and determine.]

Style of firm.

2. THE firm and style of the said partnership shall be "B. and D."

Place of business.

3. THE business of the said partnership shall be carried on at the present offices of the said A. B. (which are his private property), and the firm shall, during the said partnership, be tenants of the said offices at the yearly rent of £——, without any deduction for rates, taxes, or other impositions whatsoever (except the landlord's property tax), to be paid by equal half-yearly instalments on the —— day of —— and the —— day of —— in every year, the first of such payments to be made on the —— day of ——. All external repairs and painting shall be done by and at the expense of the said A. B., and all internal repairs and painting shall be done by and at the expense of the firm.

Certain fixtures, &c., to remain property of senior partner.

4. ALL the books, fixtures, and things now being in or about or belonging to the said offices are the property of the said A. B., and shall remain his exclusive property during the said partnership.

Profits, how to be divided.

5. THE partners shall be interested in the profits of the said business in the shares following (that is to say), the said A. B. shall be entitled to three-fourths of the said profits, and the said C. D. shall be entitled to one fourth part thereof; and they shall bear in the same proportion all losses (if any) arising in the said business.

(*b*) This clause would not be fair, if C. D. is paying a substantial premium unless upon terms providing for its return either wholly or in part.

6. THE capital (if any) from time to time required for carrying on the said business shall be made up by the said A. B. and C. D. in the same proportions as they are entitled to the profits of the said business as aforesaid. Capital.

7. THE said A. B. shall be at liberty to draw out of the funds of the partnership, for his personal expenses, the monthly sum of £——, and the said C. D. shall be at liberty to draw out of the said funds, for his personal expenses, the monthly sum of £——, and the sum to be so drawn out shall be in part or full satisfaction (as the case may be) of the shares of the said A. B. and C. D. respectively in the profits of the said business for that year: PROVIDED ALWAYS, that if in any year the sums drawn out as aforesaid by either partner shall exceed the amount of his share of the net profits for that year, such partner shall refund the excess as soon as the same shall be ascertained at the taking of the yearly account hereinafter mentioned. Power to partners to draw out monthly sums.

8. THE said partners shall keep proper books of account and enter therein the particulars of all business done and of all receipts and disbursements, and all such other matters and things as ought to be entered in the said books in the usual and regular course of business of a solicitor, and the said books shall be kept in the offices of the firm, and be open at all convenient times to the inspection of both partners. Books of account.

9. THE said C. D. shall devote the whole of his time to the said business, and diligently employ himself therein and promote to the utmost of his power the benefit and advantage of the said partnership. Junior partner to give his whole time to business.

10. THE said A. B. shall not be obliged to attend to the said business, any further than he shall think proper, and may either actively engage in the said business or abstain wholly or partially from any active part therein, as he shall from time to time think proper. Senior partner not to be obliged to attend to business.

11. ON the —— day of —— in every year an account in writing shall be taken of the moneys, credits, and effects, debts and liabilities of the said partnership, which annual account shall be written in two books, to be respectively signed by the said partners, and after such signing each of the said partners shall take one of the said books into his custody, and shall be concluded by the said account, unless some error shall appear therein, and shall be notified within three calendar months after Annual accounts to be taken.

BETWEEN SOLICITORS.

the taking of such account, and then the said account shall be opened so far only as to rectify such error, and after the making up of every such annual account, all interest (if any) which shall be due to either partner for any money which may have been lent by him to the said firm, shall, in the first place, be taken by such partner, and afterwards the said partners shall divide between them in the proportions aforesaid the net profits of the said business which have accrued or been gained during the then preceding year.

On death of a partner, surviving partner to have option of purchasing certain things.

12. In case either of the said partners shall die during the continuance of the said partnership, the surviving partner shall be at liberty to purchase the printed books, office fixtures, and furniture (if any) which shall belong to the firm at a valuation, such valuation to be made by two indifferent persons, one to be chosen by each party, or by an umpire to be appointed by the two valuers before they proceed to act, and the amount of such valuation shall form part of the partnership funds, and be divided accordingly. All deeds, drafts of deeds, and other papers belonging to clients or otherwise which shall be in the custody of the said partners, or either of them, on account of the firm, shall (subject to the claims of the persons to whom the same shall belong) remain in the hands of or be delivered to the surviving partner.

Power to senior partner to introduce his son into the business.

13. The said A. B. shall be at liberty at any time during the said term to give the whole or any part of his share in the said business, and the profits thereof, to any son of him the said A. B. who may become a duly qualified solicitor, and to introduce such son into the said partnership business to the extent of the share to be so given to him as aforesaid, and in such case the said introduced partner shall thenceforth during the residue of the said term of —— years carry on the said business in partnership with the said A. B. and C. D., or the said C. D., as the case may be, for the then residue of the said term, upon and subject to the like terms, conditions, and stipulations as are herein contained with regard to the said intended partnership between the said A. B. and C. D., or as near thereto as the circumstances will permit, save and except that the said introduced partner shall be bound to devote the whole of his time to the said business, and diligently employ himself therein, and shall not have the power which is hereinbefore

given to the said A. B. of determining the said partnership by notice. BETWEEN SOLICITORS.

14. (*Arbitration clause, supra*, p. 733.)

In witness, &c.

No. VIII.

DEED *of* Partnership *between* Surgeons *and* Apothecaries (*a*). BETWEEN SURGEONS AND APOTHECARIES.

THIS INDENTURE, made the —— day of ——, Between A. B. of, &c., surgeon and apothecary (*one partner*), of the one part, and C. D. of, &c., surgeon and apothecary (*other partner*), of the other part: Whereas the said A. B. has for some years past carried on the business of a surgeon and apothecary in the said city of ——, and he now holds the appointment of surgeon to the —— regiment of militia: And whereas the said C. D. has recently been appointed assistant-surgeon to the same —— regiment: And whereas the said A. B. has agreed to admit the said C. D. into partnership, in consideration of the payment by him the said C. D. to the said A. B. of the sum of £—— by way of premium, and also the sum of £——, being one third part of the present value of the horses, gig, harness, surgical instruments, drugs, bottles, and other effects of the said A. B. provided by him for the purposes of his said business, and upon the terms and according to the provisions hereinafter expressed, and the said C. D. has accordingly paid to the said A. B. the said sum of £—— before the execution of these presents, as the said A. B. doth hereby acknowledge: NOW THIS INDENTURE WITNESSETH, that the said A. B. and C. D. do hereby mutually covenant and agree to become and be partners in the business of surgeons and apothecaries upon and subject

Parties.

Recite agreement by one to admit other into partnership.

Witnessing part.

Mutual covenants to become partners.

(*a*) This deed will require an *ad valorem* stamp of 10*s.* per £100, in respect of the premium.

BETWEEN SURGEONS AND APOTHECARIES.

to the terms, conditions, and stipulations expressed in the following articles (that is to say) :—

Duration of partnership.

1. The said partnership shall continue during the joint lives of the said A. B. and C. D., unless previously determined under the provisions in that behalf hereinafter contained.

Style of firm.

2. The firm of the partnership shall be "B. and D."

Place of business.

3. The business of the said partnership shall be carried on at the surgery in —— street, now occupied by the said A. B., or at such other surgery as shall from time to time be agreed upon by the said partners.

Horses, &c., to become joint property.

4. The horses, gig, harness, surgical instruments, drugs, bottles, and other effects provided by the said A. B. for the purposes of his business (one third part of the value whereof has been so paid by the said C. D. as aforesaid), shall become the joint property of the said partnership.

Each partner to receive profits of his appointment to his exclusive use for certain periods.

5. The said A. B. shall receive to his own use the whole of the salary, remunerations, or other profits arising from his said appointment as surgeon, and the said C. D. shall receive to his own use the whole of the salary, remunerations, or other profits arising from the said appointment as assistant-surgeon to the said —— regiment of militia during such time as the same shall be embodied, and after the same shall be disembodied during the periods of their being called out for training and exercise.

Division of profits.

6. Subject to the provision contained in Article 5, the said partners shall be interested in the net profits of the partnership business in the shares following (that is to say), the said A. B. shall be entitled to two third parts thereof, and the said C. D. shall be entitled to one third part thereof. And they shall bear in the same proportion all losses (if any) arising in the said business.

What to be considered profits.

7. The salaries, remunerations, and other profits to arise from the said respective appointments of the said partners as surgeon and assistant-surgeon to the said —— militia, after the disembodying of the same, except during the periods of their being called out for training and exercise, and the salaries and remunerations and other profits to arise from any appointments which may hereafter be accepted by the said partners, or either of them, and all premiums with apprentices, and all pecuniary presents and gratuities from patients, and all other professional emoluments whatsoever, whether ordinary or extraordinary,

which may be received from time to time by the said partners or either of them (except as provided by Article 5) shall be treated as profits of the said partnership business, and be accounted for accordingly.

Proper account books to be kept.

8. PROPER books of account shall be kept by the said partners, and entries immediately made therein of all receipts and payments on behalf of the said partnership, and of all such other matters and things as are usually entered in similar books of account (including all receipts in respect of such salaries, remunerations, premiums with apprentices, pecuniary presents, gratuities from patients, and other moneys, as are hereinbefore provided to be treated as part of the profits of the said business).

Both partners to attend to business.

To be faithful to each other.

9. BOTH the said partners shall employ themselves diligently in the business of the said partnership, and use their utmost endeavours to promote the interest thereof. They shall be just and faithful to one another, and shall furnish to each other when required full accounts in writing of all matters and transactions relating to the said partnership.

Quarterly accounts to be taken.

10. ON the 1st day of January, the 1st day of April, the 1st day of July, and the 1st day of October in every year during the continuance of the said partnership (beginning with the 1st day of April next), a balance sheet shall be made out showing the assets and liabilities of the firm, and what belongs and is due to each partner for capital and profits, and the same shall be signed by each partner, and when signed shall be conclusive, except that if any manifest error be found therein within three calendar months after the signature thereof, such error shall be rectified. After the signing of the quarterly account, the net profits of the business appearing thereby shall be divided between the said partners in the proportions aforesaid.

Power to either partner to determine the partnership by notice.

11 EITHER of the said partners shall be at liberty at any time to withdraw from the said partnership by giving to the other of them, or leaving for him at the surgery at which the said business shall for the time being be carried on, six calendar months' notice in writing of his intention in that behalf, and at the expiration of such notice the said partnership shall be determined, and the whole of the business thereof shall thenceforth belong to the partner to or for whom such notice shall be given or left as aforesaid: PROVIDED ALWAYS, that the partner so withdrawing from the said business as aforesaid shall not at

BETWEEN SURGEONS AND APOTHECARIES.

any time during his life practise as a surgeon or apothecary within a distance of ten miles from ——, and if he shall so practise, shall pay to the other partner, his executors or administrators, the sum of £—— for every month during which or any part of which he shall so practise, by way of liquidated damages.

If either partner breaks articles, other partner may determine the partnership by notice.

12. If either of the said partners shall commit any breach of the articles herein contained on his part to be observed and performed, and the other of the said partners shall, at any time within fourteen days after knowledge or notice of such breach, give notice in writing of his desire that the said partnership shall cease, or leave such notice at the surgery at which the business of the partnership shall for the time being be carried on, then immediately upon such notice being so given or left the said partnership shall cease and determine, and the whole of the business thereof shall thenceforth belong to the partner giving or leaving such notice as aforesaid: Provided nevertheless, that any dissolution of the said partnership under this present clause shall not prejudice any remedies of the continuing partner for the breach of any of the articles herein contained.

13. Upon the determination of the partnership by the death, bankruptcy, retirement, or expulsion of a partner, the surviving or continuing partner shall be at liberty to take at a valuation the stock-in-trade and effects of the said partnership, such valuation to be made, &c. (*supra*, p. 750).

If partnership be determined by death or voluntary withdrawal, continuing partner to pay for goodwill.

14. In case the said partnership shall be determined by the death or voluntary withdrawal of either partner within ten years from the day of the date of these presents, the surviving or continuing partner shall pay to the executors or administrators of the deceased partner, or to the outgoing partner (as the case may be), the sum of £——, by way of purchase-money for the share of such deceased or outgoing partner in the goodwill of the said business, the same to be paid within twelve calendar months after the determination of the said partnership.

15. (*Arbitration clause, see supra*, pp. 728 *or* 733.)

In witness, &c.

No. IX.

ADMISSION *of the* SON *of one of two* PARTNERS *to a* PARTICULAR PART *of his* FATHER'S SHARE *in the* BUSINESS, *pursuant to a power contained in the* ARTICLES *of* PARTNERSHIP.

ADMISSION OF THE SON OF ONE OF TWO PARTNERS.

THIS INDENTURE, made, &c., BETWEEN A. B. of, &c. (*one of the partners*), of the first part, C. D. of, &c. (*the other partner*), of the second part, and E. B. of, &c. (*son of A. B.*), of the third part: WHEREAS by an indenture dated the —— day of ——, and made between the said A. B. of the one part, and the said C. D. of the other part, the said A. B. and C. D. covenanted with each other to be partners in the business of ——, for the term of seven years, to be computed from the —— day of —— then last, upon and subject to the conditions and provisions therein contained; and by the indenture now in recital it was (amongst other things) provided that it should be lawful for the said A. B., at any time or times while engaged in the said partnership, to introduce his son, the said E. B., into the said business as an acting partner, and to assign or otherwise make over to him the whole or any part of the share of the said A. B. in the stocks, moneys, and effects of the said partnership, and the profits of the said business, and that in such case the said E. B. should become a partner in the said business as to the part or parts to be assigned to him as aforesaid for the residue of the said term of seven years, upon and subject to the conditions and provisions contained in the said indenture, or as near thereto as circumstances would permit, and should enter into a covenant with the said A. B. and C. D., or with the said C. D. alone as the case might require, to observe and perform the said conditions and provisions so far as the same ought to be observed and performed by him the said E. B.: AND WHEREAS the said A. B. is desirous of introducing his son the said E. B. into the said business as an acting partner, and to give, assign, and make over to him the said E. B. one moiety of the share of him the said A. B. in the stock-in-trade, moneys, credits, and effects of the said partnership, and the profits of the said business: NOW THIS INDENTURE WITNESSETH, that in order to effec-

Parties.

Recite articles of partnership.

Covenant in articles enabling one of the partners to admit his son to be a partner to whole or a portion of his share.

Desire to admit.

Witnessing part.

ADMISSION OF THE SON OF ONE OF TWO PARTNERS.

tuate his said desire, and in pursuance of the power for this purpose given to him by the said recited indenture as aforesaid, the said A. B. doth hereby introduce the said E. B. into the said partnership business as an acting partner, and doth hereby assign unto the said E. B. one moiety of the share of him the said A. B. in the stock-in-trade, moneys, credits, and effects of the said partnership, and in the profits to arise from the said partnership business, To HOLD the same unto the said E. B. absolutely: AND THIS INDENTURE ALSO WITNESSETH, that in consideration of the premises the said E. B. hereby covenants with the said A. B. and C. D., that he the said E. B. will henceforth, and during the remainder of the said partnership term of seven years, remain and be a partner with the said A. B. and C. D. in the said business, and will observe and perform the conditions and provisions contained in the said indenture of the —— day of ——, so far as the same ought henceforth to be observed and performed by him the said E. B. in respect of the moiety hereby assigned to him of the share of the said A. B. in the said business in the same manner in all respects as the said A. B. would have been bound to observe and perform the same if these presents had not been made.

Admission of son to part of the share of the father.

Second witnessing part.

Covenant by son to observe partnership articles.

IN WITNESS, &c.

No. X.

DISSOLUTION OF PARTNERSHIP.

DEED *of* DISSOLUTION *of* PARTNERSHIP *where one of the* PARTNERS *retires, and the two others continue the* BUSINESS; ASSIGNMENT *of the* RETIRING PARTNER'S *interest in the* GOODWILL *and* STOCK-IN-TRADE *and* EFFECTS, *and* COVENANT *by him* NOT TO CARRY ON *similar* BUSINESS (*a*).

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*retiring partner*), of the first part, C. D. of, &c.

Stamp duty.

(*a*) The deed will require an *ad valorem* duty of 10*s.* per £100 on the whole sum paid to the retiring partner, the transaction being in effect a sale. Potter *v.* Commissioners of Inland Revenue, 23 L. J. Ex. 345; Christie *v.* Same, L. R. 2 Ex. 46; Phillips *v.* Same, ib. 399.

In the subsequent Precedents the duty is either wholly or partially avoided.

(*one of the continuing partners*), of the second part, and E. F. of, &c. (*other continuing partner*), of the third part: WHEREAS by an indenture dated the —— day of ——, and made, &c., the said A. B., C. D., and E. F. agreed to carry on the business of ——, in partnership in equal shares for the term of —— years, subject to the provisions contained in the said indenture, and they have carried on the said business accordingly up to the day of the date of these presents: AND WHEREAS a statement and account has been this day settled between the parties hereto whereby it appears that the share of the said A. B. in the assets of the said partnership (including the goodwill of the business), after providing for the debts and liabilities thereof, has been valued at £——: AND WHEREAS it has been agreed between the parties hereto that the said A. B. shall retire from the said business, and shall accept the sum of £—— in full satisfaction of his share and interest therein and the goodwill thereof, and all the stock-in-trade, credits, and effects belonging thereto: AND it has been also agreed that the said sum of £—— shall be paid by four equal instalments, at the expiration of six, twelve, eighteen, and twenty-four calendar months respectively, computed from the date of these presents, with interest on the same sum or the instalments thereof for the time being remaining unpaid after the rate of £— per cent. per annum computed from the date of these presents, and that the said C. D. and E. F. shall give and execute to the said A. B. their joint and several bond for securing the payment of the said sum of £—— by such instalments and with such interest as aforesaid, and also for indemnifying him against the debts and liabilities of the said partnership: AND WHEREAS in part pursuance of the said agreement the said C. D. and E. F. have given and executed to the said A. B. their joint and several bond (*b*), bearing even date with these presents, in the penal sum of £——, subject to a condition thereunder written for making the same void upon payment by the said C. D. and E. F., or one of them, to the said A. B., of the sum of £—— by such instalments, and with such interest as aforesaid, and upon the said C. D. and E. F. indemnifying the said A. B., and his estate and effects, from and

DISSOLUTION OF PARTNERSHIP.

Recite existing partnership deed.

That an account has been settled between partners.

Agreement that one partner shall retire upon certain terms.

Bond by remaining partners to retiring partner.

(*b*) This bond will require a 10*s.* stamp only. See Stamp Act, 1891, sect. 56, sub-sect. 4.

DISSOLUTION OF PARTNERSHIP.

against the debts and liabilities of the said partnership and all claims and demands in respect thereof: NOW THIS INDENTURE WITNESSETH, that in further pursuance of the said agreement in this behalf the said A. B., C. D., and E. F. do hereby dissolve the said partnership hitherto existing between them so far as regards the said A. B., and the said C. D. and E. F. do hereby mutually covenant that the said C. D. and E. F., will henceforth be and remain partners in the said business in equal shares for the residue of the said term of —— years upon and subject to the conditions and provisions contained in the said indenture dated the —— day of ——, or as near thereto as the circumstances will permit: AND THIS INDENTURE ALSO WITNESSETH, that in further pursuance of the said agreement in this behalf, and in consideration of the premises, the said A. B., as beneficial owner, doth hereby assign and release unto the said C. D. and E. F., ALL the share and interest of him the said A. B. in the said business and the goodwill thereof and the stock-in-trade, moneys, credits, and effects belonging thereto, TO HOLD the same unto the said C. D. and E. F., absolutely: AND THE SAID A. B., so far as regards his share hereby assigned or expressed so to be, doth hereby appoint the said C. D. and E. F., and each of them, to be the true and lawful attorneys and attorney of him the said A. B. to ask, demand, sue for, recover, and receive of and from all persons liable to pay or deliver the same, all the debts, sums of money, and effects due and owing and belonging to the said partnership hereby dissolved, or expressed so to be, and on payment or delivery thereof to give and execute receipts, releases, and discharges for the same respectively, and on non-payment or non-delivery thereof, or any part thereof, to institute any actions or other proceedings whatsoever for recovering and compelling payment thereof, and for the purposes aforesaid, or any of them, to use the name of the said A. B., and to do and perform all acts and things in relation to the premises as fully and effectually as he the said A. B. might or could have done the same in his own proper person if these presents had not been executed: AND THE SAID A. B. doth hereby covenant with the said C. D. and E. F., that he the said A. B. will not during his life carry on the business of —— in the town of —— or within —— miles therefrom: AND THIS INDENTURE LASTLY WITNESSETH, that

Witnessing part.

Parties dissolve partnership as to retiring partner, and others agree to remain partners.

Second witnessing part.

Retiring partner assigns his share to other partners.

Power of attorney.

in consideration of the premises, the said A. B. doth hereby release the said C. D. and E. F. and each of them, and the said C. D. and E. F. do hereby release the said A. B., of and from all covenants and provisions contained in the said indenture of the —— day of —— (*Articles of Partnership*), and all actions, claims, and demands in relation to the late partnership. DISSOLUTION OF PARTNERSHIP.

IN WITNESS, &c.

No. XI.

AGREEMENT *for* DISSOLUTION *of* PARTNERSHIP, *where the* PARTNERSHIP PROPERTY *consists wholly of* CHATTELS *and* BOOK DEBTS, *and Book Debts are* NOT *taken over by* CONTINUING PARTNERS, *and* NOTHING *is paid for* GOODWILL (*a*). AGREEMENT FOR DISSOLUTION.

THIS AGREEMENT, made the —— day of ——, 18—, BETWEEN A. B. of, &c. (*retiring partner*), of the one part, and C. D. of, &c., and E. F. of, &c. (*continuing partners*), of the other part, WHEREBY it is agreed as follows:— Parties.

1. THE partnership between the parties hereto in the trade or business of ——, hitherto carried on by them at ——, under a deed of partnership, dated, &c., and made, &c. (*date and parties*), shall be dissolved, as regards the said A. B., as from the 31st day of December last, and the business shall as from that date belong to the said C. D. and E. F., and be carried on by them in partnership. Partnership to be dissolved as regards the retiring partner only.

2. THE stock-in-trade and effects in the nature of personal chattels (*b*) belonging to the late firm, shall, as from the said 31st day of December last, belong to the said C. D. and E. F., and they shall pay to the said A. B. the sum of £——, being Stock-in-trade in nature of personal chattels to belong to continuing partners on paying retiring partner value of his share.

(*a*) This agreement requires only an ordinary agreement stamp.

(*b*) As these articles come under the head of "goods, wares, and merchandise," no stamp duty is payable in respect of them. See Stamp Act, 1891, Schedule, Agreements; Horsfall *v.* Key, 17 L. J. (N. S.) Ex. 266.

AGREEMENT FOR DISSOLUTION.

one third part of the estimated value thereof, immediately after the signing hereof [*or* by the following instalments, namely—]

Book debts to be collected by receiver on behalf of all parties.

3. The book debts owing to the late firm shall be collected by X. Y. of, &c., on behalf of the late firm, and shall be applied by him, first, in payment to himself of a commission of 5 per cent. on the gross amount received by him by way of remuneration for his trouble, secondly, in payment of the debts and liabilities of the late firm, and the surplus shall be divided between the parties hereto in equal shares [*or whatever their shares may have been in the profits of the late firm*] (*c*).

Debts and liabilities of old firm to be paid by old firm.

4. The debts and liabilities of the old firm, so far as they are not satisfied out of the book debts as aforesaid, shall be paid by the parties hereto in equal shares [*or* in proportion to their respective shares in the profits of the late firm].

Retiring partner may carry on same business if he thinks fit.

5. Inasmuch (*d*) as in estimating the sum to be paid as aforesaid, nothing was added in respect of the goodwill of the business, the said A. B. shall be at liberty to carry on the like or any other business wherever he may think fit.

In witness, &c.

No. XII.

AGREEMENT FOR DISSOLUTION.

AGREEMENT *for* Dissolution *of* Partnership, *where* Partnership Property *consists only of* Personal Chattels *and* Book Debts, *and the* Book Debts *and also the* Liabilities *of the* Old Firm *are to be taken over by the* New Firm (*a*).

THIS AGREEMENT, &c. (*as in No. XI., down to end of Article* 1).

Continuing partners to purchase share

2. The said C. D. and E. F. shall purchase the share of the said A. B. in the stock-in-trade and effects in the nature of

(*c*) As the book debts are not sold, no *ad valorem* stamp duty will be payable in respect thereof under the Stamp Act, 1891, s. 59.

(*d*) This will be inserted, if so agreed.

(*a*) The stamp on this agreement will be for an *ad valorem* duty of 10*s.* per £100 on the sum to be paid for the purchase of the share of the book debts, without any deduction for the liabilities.

personal chattels, belonging to the old firm, for the sum of £——, being one third part of the estimated value thereof, and shall purchase the share of the said A. B., in the book debts owing to the old firm, for the sum of £——, being one third part of the estimated value thereof, after allowing for bad and doubtful debts, the said purchase to take effect from the 31st day of December last.

AGREEMENT FOR DISSOLUTION.

of retiring partner in stock-in-trade and book debts.

3. The said C. D. and E. F. shall take upon themselves all the debts and liabilities of the old firm, and shall keep indemnified the said A. B. therefrom, and the said A. B. shall pay or allow to them on account the sum of £——, as being one third part of the amount thereof.

Continuing partners to take over liabilities of old firm, and to be allowed for retiring partner's share of same.

4. The said sum of £——, being deducted from the said sums of £—— and £——, leaves a balance of £——, which the said C. D. and E. F. hereby agree to pay to the said A. B. by four equal half-yearly instalments, on the 30th day of June, 18—, the 31st day of December, 18—, the 30th day of June, 18—, and the 31st day of December, 18—, and the said C. D. and E. F. shall, on the same half-yearly days, pay to the said A. B. interest after the rate of £—— per cent. per annum, computed from the 31st day of December last, on the said principal sum or on the instalments for the time being remaining unpaid.

Balance payable to retiring partner to be paid by instalments, with interest.

In witness, &c.

No. XIII.

ACKNOWLEDGMENT *by* Executors *of a* Deceased Partner *that the* Share *of their* Testator *in the* Partnership Property *has been* satisfied (*a*).

ACKNOWLEDGMENT BY EXECUTORS OF DECEASED PARTNER.

WHEREAS by an indenture dated, &c., and made, &c. (*date and parties*), the said A. B., C. D., E. F., and G. H. agreed to

Recital of partnership deed.

(*a*) It is assumed in this case that the partnership deed contains provisions similar to those in Precedent No. IV., Arts. 14, 19, 20. It is also assumed that if there is any real estate it was vested in all the partners as

ACKNOWLEDGMENT BY EXECUTORS OF DECEASED PARTNER.

become partners in the trade or business of —— at ——, subject to the conditions therein contained, and by the said indenture (Article 14) it was provided, &c. (*recite Articles* 14, 19, 20, *of Precedent No. IV.*): AND WHEREAS the said A. B. (*deceased partner*), died on the —— day of ——, 18—, having made his will dated the —— day of ——, 18—, whereby he appointed the said I. K. and L. M. to be his executors, who duly proved the same in the principal probate registry on the —— day of ——, 18—: AND WHEREAS by the last annual account of the assets and liabilities of the firm, taken under Article 14 of the said indenture, it appears that the sum of £—— was the net value of the share of the said A. B. on the 31st day of December last: AND WHEREAS the said C. D., E. F., and G. H. (*surviving partners*), have before the execution of these presents paid to the said I. K. and L. M., as such executors as aforesaid, the sum of £——, being interest after the rate of £5 per cent. per annum on the said sum of £——, from the 31st day of December last up to the day of the death of the said A. B., as they the said I. K. and L. M. do hereby acknowledge: AND WHEREAS the said C. D., E. F., and G. H. have given and executed their joint and several bond (*b*), bearing even date with these presents in the penal sum of £——, subject to a condition thereunder written for making the same void on payment by the said C. D., E. F., and G. H., or some or one of them to the said I. K. and L. M., as such executors as aforesaid, of the sum of £—— by four equal instalments, payable respectively on the —— day of ——, 18—, the —— day of ——, 18—, the —— day of ——, 18—, and the —— day of ——, 18—, with interest after the rate aforesaid on the amount for the time being remaining unpaid, computed from the said —— day of —— last (*day of the death*), and upon the said C. D., E. F., and G. H. indemnifying the said I. K. and L. M., and the estate of the said A. B. deceased, from and against the debts and liabilities of the said partnership

Death of a partner, and his will appointing executors.

Share of the deceased partner according to the last stock-taking.

Payment by surviving partners of interest up to death.

Bond for principal money.

joint tenants, so that on the death of one partner the legal estate passed to the survivors, and consequently no conveyance is necessary. In these circumstances, the whole beneficial interest of the deceased partner in the partnership property will have effectually passed to the surviving partners by virtue of Article 19 of the partnership deed. The money payable to the executors is a mere debt for which a simple receipt is sufficient.

(*b*) This bond will require an *ad valorem* stamp of 2*s.* 6*d.* for every £100 secured, and an additional 10*s.* for the indemnity.

and all claims and demands in respect thereof: Now the said I. K. and L. M., as the executors of the said A. B. deceased, do hereby acknowledge and declare that the said sums of £—— and £—— respectively paid and secured to them as aforesaid are in full satisfaction of the share of the said A. B. deceased, in all the property and assets of the said late partnership.

ACKNOWLEDGMENT BY EXECUTORS OF DECEASED PARTNER.

Dated this —— day of ——, 18—.

(Signed) I. K.
L. M.

Witness, N. O.

No. XIV.

ACKNOWLEDGMENT *by* RETIRING PARTNER *that his* SHARE *in the* PARTNERSHIP PROPERTY *has been* SATISFIED.

ACKNOWLEDGMENT BY RETIRING PARTNER.

WHEREAS, &c. (*recite partnership deed as in last Precedent*): AND WHEREAS by a writing under the hand of the said A. B., dated the —— day of ——, 18—, and addressed to the said C. D. and E. F., the said A. B. gave notice to the said C. D. and E. F. that he intended to retire from the partnership as from the —— day of ——, 18—: AND WHEREAS by the last annual account of the assets and liabilities of the firm taken under Article 14 it appears that the sum of £—— was the net value of the share of the said A. B. on the 31st day of December last (*recite payment by C. D. and E. F. of* £—— *and execution of bond from C. D. and E. F. to A. B. as in last Precedent mutatis mutandis*): [AND WHEREAS (*a*) the assets of the said firm include certain freehold hereditaments situate at ——, the share of the said A. B. wherein was valued at £——: AND WHEREAS the said freehold hereditaments have been released by the said A. B. unto and to the use of the said C. D. and E. F. in fee simple by

(*a*) This and the next recital apply only where there is real estate. The conveyance of the real estate must be stamped with an *ad valorem* stamp for the sum at which A. B.'s share therein was valued.

ACKNOWLEDGMENT BY RETIRING PARTNER.

an indenture bearing even date herewith]: Now the said A. B. hereby acknowledges that the said sums of £—— and £—— paid and secured to him respectively as aforesaid are in full satisfaction of his share in all the property and assets of the said partnership.

(Signed) A. B.

Witness C. D.

No. XV.

CONVEYANCE OF SHARE IN FREEHOLDS AND LEASEHOLDS TO SURVIVING PARTNER.

CONVEYANCE *and* ASSIGNMENT *by the* DEVISEE *and* EXECUTRIX *of a* DECEASED PARTNER *in a* BREWERY BUSINESS *of his* SHARE *of* FREEHOLD *and* LEASEHOLD HOUSES *forming part of the* PARTNERSHIP ASSETS *to the* SURVIVING PARTNER, *who* PURCHASES *under a* POWER *in the* PARTNERSHIP DEED (*a*).

Parties.

THIS INDENTURE, made the —— day of ——, 18—, BETWEEN A. B. of, &c. (*devisee and executrix of deceased partner*), of the one part, and C. D. of, &c. (*surviving partner*), of the other part:

Recitals.

Conveyance and assignment of freehold and leasehold property to deceased partner and surviving partner as tenants in common in equal shares.

WHEREAS by an indenture, dated, &c., and made, &c., the freehold messuages, lands, and hereditaments comprised in the first part of the schedule hereunder written, were conveyed as to one undivided moiety thereof to the use of the said X. B. (*the deceased partner*), his heirs and assigns, and as to the other undivided moiety thereof to the use of the said C. D., his heirs and assigns: AND by the same indenture the leasehold messuages, lands, and hereditaments comprised in the second part of the said schedule were assigned unto the said X. B. and C. D., their executors, administrators, and assigns, for the residue then unexpired of the several terms of years for which the said premises were respectively holden, subject to the rents and

(*a*) This is one of five deeds for conveying the share of the deceased partner in the freehold and leasehold property of the partnership. The remaining assets (except moveable chattels passing by delivery, and book debts) are transferred by separate deeds. The whole arrangement is recited in the next Precedent.

CONVEYANCE OF SHARE IN FREEHOLDS AND LEASEHOLDS TO SURVIVING PARTNER.

covenants affecting the same respectively: AND WHEREAS by &c. (*recite a mortgage by X. B. and C. D. of the said freehold and leasehold premises for* £10,000): AND WHEREAS the said X. B. and C. D. carried on the business of common brewers and maltsters at ——, in partnership, and were entitled to the property and assets of the said partnership in equal shares, subject to the debts and liabilities thereof: AND WHEREAS the messuages, lands, and hereditaments comprised in the schedule hereunder written with other freehold and leasehold messuages, lands, and hereditaments, were part of the property and assets of the said partnership: AND WHEREAS the said X. B. duly made his will, dated, &c., and thereby devised all his real and personal estate to his wife, the said A. B., and appointed her sole executrix of his said will: AND WHEREAS (*death of testator and probate of will*): AND WHEREAS the said principal sum of £10,000 (*b*), secured by the said indenture of mortgage, still remains due and owing: AND WHEREAS it has been agreed between the parties hereto that the said C. D. shall purchase the moiety late of the said X. B. deceased, of and in all the freehold and leasehold messuages, lands, and hereditaments which constituted part of the partnership property at the time of the death of the said X. B., subject to the incumbrances affecting the same respectively, at or for the price or sum of £26,850 (*c*): AND WHEREAS it is intended that such of the premises agreed to be purchased as aforesaid as are not included in the conveyance and assignment intended to be made by these presents, shall be conveyed and assigned to the said C. D. by four separate indentures bearing even date with these presents: AND WHEREAS for the purposes of the Stamp Acts the said purchase-money of £26,850 has been apportioned between the several hereditaments forming the subject of these presents, and of the said other

Mortgage.

That deceased partner and surviving partner carried on business as brewers.

That said freeholds and leaseholds (with others) were part of partnership assets.

Will of deceased partner.

That money remains due on mortgage.

Agreement that surviving partner shall purchase moiety of deceased partner.

Arrangement that other freeholds and leaseholds shall be conveyed by four separate deeds.

Apportionment of purchase-money for purpose of Stamp Acts.

(*b*) The other freeholds and leaseholds are also subject to mortgages amounting with the £10,000 to £37,300.

(*c*) It will be seen from the recitals in the next Precedent that this purchase-money is arrived at thus:—

Gross value of freeholds and leaseholds - -	£91,000
Deduct mortgage debts - - - - -	37,300
	2) 53,700
	£26,850

CONVEYANCE OF SHARE IN FREEHOLDS AND LEASEHOLDS TO SURVIVING PARTNER.

indentures respectively, and the sum of £9,000 (*d*) is the proportion which has been agreed upon to be paid for or in respect of the premises the subject of these presents: AND WHEREAS the said sum of £9,000 has been duly paid or satisfied by the said C. D. to the said A. B. before the execution of these presents, as she the said A. B. doth hereby acknowledge: NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement in this behalf, and in consideration of the sum of £9,000 paid or satisfied by the said C. D. to the said A. B. as hereinbefore is mentioned, SHE the said A. B. as beneficial owner hereby conveys unto the said C. D., ALL THAT the one undivided moiety or other the part or share late of the said X. B. deceased, of and in ALL and singular the messuages, lands, tenements, and hereditaments comprised in the first part of the schedule hereunder written and therein particularly described [and ALSO of and in all other (if any) freehold messuages, lands, tenements, and hereditaments heretofore forming part of the property and assets of the partnership lately subsisting between the said X. B. and C. D., and not included in the several conveyances made by the several indentures bearing even date herewith hereinbefore mentioned or referred to, or any of them (*e*)]: TO HOLD the same unto and to the use of the said C. D., in fee simple, SUBJECT nevertheless to the hereinbefore recited indenture of mortgage, and the said principal sum of £10,000 due and owing thereon, and interest due and to become due for and in respect of the same as from the —— day of ——, 18—, the day of the decease of the said X. B.: AND THIS INDENTURE ALSO WITNESSETH, that in further pursuance of the said agreement, and for the consideration hereinbefore expressed, THE said A. B. as beneficial owner hereby assigns unto the said C. D., ALL THAT the one undivided moiety, or other the part or share late of the said X. B. deceased, of and in ALL and singular the leasehold messuages, lands, and tenements comprised in the second part of the schedule hereunder written and therein particularly described [and also of and in all other (if any) leasehold messuages, lands, and tenements heretofore

Payment or satisfaction of purchase-money.

Witnessing part.

Devisee of deceased partner conveys moiety of freeholds

to surviving partner in fee simple subject to mortgage.

Further witnessing part.

Executrix of deceased partner assigns moiety of leaseholds,

(*d*) The stamp duty will be on £9,000+£5,000 (half of the mortgage debt)=£14,000.

(*e*) The words within brackets will be inserted in one only of the conveyances.

forming part of the property and assets of the partnership lately subsisting between the said X. B. and C. D., and not included in the assignments made by the several indentures bearing even date herewith hereinbefore mentioned or referred to, or any of them (*f*)]: To HOLD the same unto the said C. D., for all the residue now unexpired of the several terms of years for which the same are respectively holden, SUBJECT nevertheless to the rents, covenants, and conditions affecting the same respectively, and subject also to the said indenture of mortgage, and the said principal sum of £10,000 due and owing thereon, and to the interest due and to become due in respect thereof as from the said —— day of ——, 18—: AND the said C. D. hereby covenants with the said A. B., that he the said C. D., his heirs, executors, administrators, or assigns will, as from the said —— day of ——, 18— (being the day of the decease of the said X. B.), pay the yearly rents and observe and perform the lessee's covenants and conditions respectively reserved and contained by and in the several leases under which the said leasehold premises, one moiety whereof is hereby assigned, are respectively held: AND ALSO will pay the said principal sum of £10,000 secured by the said indenture of mortgage as aforesaid, and all interest due and to become due in respect thereof, as from the said —— day of ——, 18—, and will at all times hereafter keep indemnified the said A. B., and also the estate and effects of the said X. B., deceased, from and against the said rents, covenants, conditions, principal money and interest respectively, and all actions, claims, and demands in anywise relating thereto.

CONVEYANCE OF SHARE IN FREEHOLDS AND LEASEHOLDS TO SURVIVING PARTNER.

unto surviving partner,

subject to rents and covenants and to mortgage.

Covenant by surviving partner to indemnify estate of deceased partner against rents and covenants and mortgage debt.

IN WITNESS, &c.

THE SCHEDULE REFERRED TO BY THE ABOVE-WRITTEN INDENTURE.

(*f*) The words within brackets will be inserted in one only of the conveyances.

No. XVI.

ASSIGNMENT OF SHARE IN REMAINING PARTNERSHIP ASSETS TO SURVIVING PARTNER.

ASSIGNMENT (*to accompany last Precedent*) *by* EXECUTRIX *of* DECEASED PARTNER *of a* MOIETY *of the* GOODWILL, *and of certain other* PERSONAL ESTATE, *being the remaining* ASSETS *of the* PARTNERSHIP (*other than* MOVEABLE CHATTELS *passing by delivery, and* BOOK DEBTS) *to the* SURVIVING PARTNER; COVENANT *for* FURTHER ASSURANCE.

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*executrix of deceased partner*), of the one part, and

Recitals.

C. D. of, &c. (*surviving partner*), of the other part: WHEREAS

Partnership deed and will of deceased partner.

&c. (*recite partnership deed between X. B. and C. D., including a provision enabling surviving partner to purchase the share of deceased partner at a valuation on giving notice, the purchase-money to be paid by eight half-yearly instalments, and to be secured by bond; will of X. B., making his wife A. B. sole devisee and executrix; his death and probate of his will*): AND WHEREAS by a

Notice by surviving partner to purchase share of deceased partner.

notice under the hand of the said C. D., dated the —— day of ——, 18—, and addressed to the said A. B. as such executrix as aforesaid, the said C. D. gave to the said A. B. notice that it was his intention to exercise the option given to him by the said indenture as aforesaid of purchasing the share of the said X. B. deceased, of and in the assets and property of the said

Award of valuers of £41,000.

partnership (*recite appointment of valuers and their award fixing the purchase-money to be paid by C. D. at* £41,000): AND

Payment of one instalment of purchase-money.

WHEREAS the sum of £5,125, being the one-eighth part of the said purchase-money, which became payable on the —— day of ——, being the expiration of the first half-year after the death of the said X. B., has been duly paid by the said C. D. to the

Bond to secure remaining instalments.

said A. B., as she doth hereby acknowledge: AND WHEREAS the said C. D. and G. H. of, &c. (as his surety), have made and executed to the said A. B. their joint and several bond bearing even date with these presents in the sum of £——, subject to a condition for making void the same on payment to the said A. B., her executors, administrators, or assigns of the sum of £35,875, being the remainder of the said purchase-money of

ASSIGNMENT OF SHARE IN REMAINING PARTNERSHIP ASSETS TO SURVIVING PARTNER.

£41,000, by seven half-yearly instalments, with interest thereon in the meantime after the rate of £5 per cent. per annum, and upon the said C. D. keeping indemnified the said A. B., and the estate and effects of the said X. B., deceased, from and against all debts and liabilities of the said late partnership: And whereas for the purposes of the said award the messuage or brewery and dwelling-house in or upon which the said business has been carried on, and the brewhouses, warehouses, storehouses, granaries, malthouses, and other offices at ——, belonging to the said business, and the freehold and leasehold messuages or public houses and other messuages, lands, and hereditaments, forming part of the said partnership estate, and the coppers, vats, barrels, casks, waggons, carts, drays, implements, horses, plant, utensils, beer, ale, porter, malt, hops, and other stock-in-trade belonging to the said partnership business, and the book debts and other effects constituting the assets of the said partnership (other than cash), were valued by the said (*valuers*) at the sum of £166,760, making with a sum of £590 cash belonging to the said firm, the sum of £167,350: And whereas in the said valuation the several items constituting the property of the said partnership were valued as follows: 1st, the freehold and leasehold messuages, lands, and hereditaments (including the trade and other fixtures attached thereto) were valued at the sum of £91,000, and such valuation was made without any deduction for the mortgages affecting the same; 2nd, the goodwill of the said business was valued at the sum of £10,000 pursuant to an arrangement in that behalf made between the partners during the life of the said X. B.; 3rdly, five shares in the —— Gas Company, standing in the name of the said X. B. alone, but which were part of the partnership property, were valued at £200; 4thly, the policies of assurance and rights mentioned in the first schedule to these presents were valued at £450; 5thly, the mortgage debts mentioned in the second schedule to these presents were estimated at the sum of £8,800, being the full amount thereof; 6thly, the book debts owing to the said partnership were ascertained (after allowing for bad and doubtful debts) to amount to the sum of £7,240; and 7thly, the barrels, casks, waggons, drays, horses, implements, plant, utensils and materials, stock of beer, ale, porter, malt, hops, and other stock-in-trade belonging to the said business, were valued at the sum of

That for purposes of award the property and assets of the partnership were valued at £167,350.

That items were separately valued.

Freeholds and leaseholds at £91,000.

Goodwill at £10,000.

Gas shares at £200.

Policies and rights at £450.

Mortgage debts at £8,800.

Book debts at £7,240;

and plant and stock-in-trade at £49,070.

ASSIGNMENT OF SHARE IN REMAINING PARTNERSHIP ASSETS TO SURVIVING PARTNER.

£49,070: And whereas it appears from the books of the said partnership that the said C. D. had brought into the business the sum of £5,573 over and above his moiety of the capital thereof, for which sum of £5,573 he was entitled to be deemed a creditor of the said firm under clause —— of the said articles of partnership: And whereas the debts and liabilities of the said firm (including therein the said sum of £5,573) were ascertained by the said valuers to amount to £85,350, which, being deducted from the aforesaid sum of £167,350, left the sum of £82,000 as the net value of the partnership property and assets, after allowing for debts and liabilities, and the sum of £41,000 as the net value of the moiety of each partner therein: And whereas the said freehold and leasehold messuages, lands, and hereditaments were at the death of the said X. B. subject to mortgages thereon amounting to £37,300, which sum is part of the said sum of £85,350: And whereas it has been arranged and agreed between the parties hereto that the said sum of £41,000 paid or secured to be paid to the said A. B. as aforesaid as and for the share of the said X. B., deceased, in the property and assets of the said partnership pursuant to the aforesaid award, shall be apportioned between the several items constituting the said assets and property upon the basis of the aforesaid valuation: And whereas the sum of £37,300, being the amount of the mortgage debts affecting the said freehold and leasehold premises, being deducted from the sum of £91,000 at which the said premises were valued as aforesaid, leaves the sum of £53,700 as the net value of the said premises, and the sum of £26,850 as the net value of one moiety thereof: And whereas it has accordingly been agreed that the said sum of £26,850, part of the said sum of £41,000, shall be deemed the purchase or consideration money for the moiety of the said X. B. deceased, in the said freehold and leasehold premises, subject to a moiety of the mortgage debts affecting the same; and that the sum of £5,000 (other part of the said sum of £41,000), shall be deemed the purchase or consideration money for the moiety of the said X. B., deceased, in the goodwill of the said business; and that the sum of £100 (other part of the sum of £41,000) shall be deemed the purchase or consideration money for the moiety of the said X. B., deceased, in the said —— gas shares; and that the sum of £225 (other part of the said sum of £41,000) shall

That surviving partner was creditor for advances made beyond his share of capital.

That debts and liabilities came to £85,350,

leaving £82,000 net value of assets,

and £41,000 value of moiety.

That freeholds and leaseholds were subject to mortgages for £37,300.

Agreement that said £41,000 should be apportioned according to said valuations.

That £26,850 was accordingly net value of moiety of freeholds and leaseholds.

Agreement that £26,850 should be deemed consideration for same.

£5,000 for moiety of goodwill,

£100 for moiety of gas shares,

£225 for moiety of policies,

ASSIGNMENT OF SHARE IN REMAINING PARTNERSHIP ASSETS TO SURVIVING PARTNER.

be deemed the purchase or consideration money for the moiety of the said X. B., deceased, in the policies of assurance and rights comprised in the first schedule to these presents; and that the remainder of the said sum of £41,000 shall be deemed the consideration money for the moiety of the said X. B., deceased, in the mortgage debts mentioned in the second schedule hereto, and in the book debts, stock-in-trade and remaining assets of the said partnership, after allowing for the debts and liabilities of the said partnership other than the mortgage debts affecting the said freehold and leasehold premises: AND WHEREAS the moiety or other the part or share of the said X. B., deceased, of and in the said freehold and leasehold premises, has been conveyed and assigned by the said A. B. unto the said C. D., by five several indentures bearing even date with these presents, in consideration of the several sums of money amounting together to the sum of £26,850 in the same indentures respectively expressed to have been paid or satisfied by the said C. D. to the said A. B., the said sums of money being in fact part of the said sum of £41,000: AND WHEREAS the said —— gas shares have been transferred by the said A. B. unto the said C. D. by a proper deed for that purpose bearing even date with these presents in consideration of the sum of £100 (*a*) (being other part of the said sum of £41,000): AND WHEREAS the barrels, casks, waggons, carts, drays, horses, implements, plant, utensils, materials, stock of beer, ale, porter, malt, hops, and other stock-in-trade, belonging to the said business, being in the nature of personal chattels, have been delivered and handed over to the said C. D.: AND WHEREAS the mortgage debts mentioned in the second schedule to these presents have become vested in the said C. D., as the survivor of the mortgagees therein named: AND WHEREAS the greater part of the book debts owing to the said late firm have been received by the said C. D., and the remainder thereof will be received by him as surviving partner: NOW THIS INDENTURE WITNESSETH, that in consideration of the sums of £5,000 and £225 (other part of the said sum of £41,000 paid or secured to be paid as aforesaid) the said A. B. as beneficial owner hereby assigns unto the said C. D., ALL THAT the moiety or other the share and interest late of the said X. B., deceased,

and remainder of £41,000 for moiety of book debts, plant, &c., after allowing for debts.

Conveyance and assignment of moiety of freeholds and leaseholds by five separate deeds.

Transfer of gas shares.

Delivery of plant, stock-in-trade, and moveable effects.

That mortgage debts had become vested in surviving partner.

That book debts had been or would be received by surviving partner.

Witnessing part.

Executrix of deceased partner in consideration of £5,000 and £225 assigns

(*a*) This transfer deed should be stamped with an *ad valorem* stamp on £100.

ASSIGNMENT OF SHARE IN REMAINING PARTNERSHIP ASSETS TO SURVIVING PARTNER.

moiety of goodwill and policies of assurance unto surviving partner. Further witnessing part. Executrix acknowledges receipt of £41,000 in full satisfaction of share of deceased partner in assets, and covenants for further assurance.

of and in ALL THAT the goodwill of the said partnership business, and of and in all those policies of assurance, rights and things comprised in the first schedule to these presents, To HOLD the same unto the said C. D. absolutely: AND THIS INDENTURE ALSO WITNESSETH, that the said A. B. hereby acknowledges and declares that the said sum of £41,000, part whereof has been paid, and the residue whereof is secured to be paid as aforesaid, is accepted by her, the said A. B., in full satisfaction of the share of the said X. B., deceased, in all the property and assets of the said partnership, and all claims and demands relating thereto: AND the said A. B. hereby covenants with the said C. D. that she, the said A. B., her executors, administrators or assigns, will from time to time, and at all times, upon the request and at the cost of the said C. D., his executors, administrators, or assigns, make, do, and execute all such further acts, deeds, and things, for effectually vesting in him or them all the property and assets of the said late partnership, and enabling him or them to receive the same as by him or them shall be reasonably required (*b*).

IN WITNESS, &c.

THE FIRST SCHEDULE ABOVE REFERRED TO.

(*Two Policies of life assurance and certain exclusive rights of supplying public houses with beer, &c.*)

THE SECOND SCHEDULE ABOVE REFERRED TO.

The principal sum of £—— secured by an indenture dated, &c., and made, &c.

The principal sum of £—— secured by, &c.

The principal sum of £—— secured by, &c.

All the above deeds provide that the moneys thereby secured shall be payable to the survivor of the mortgagees, but the said moneys in fact form part of the partnership assets.

(*b*) It is considered that the stamps on this deed should be an *ad valorem* duty at 10*s.* per £100 on £5,225, the consideration for the moiety of the goodwill and policies, &c., and a common deed stamp (10*s.*).

No. XVII.

NOTICE *by one* PARTNER *to another, to determine a* PARTNERSHIP *under a Power.* TO DETERMINE PARTNERSHIP.

PURSUANT TO THE POWER for this purpose contained in certain articles of partnership, dated the —— day of ——, and made between you of the one part, and me of the other part, I hereby give you notice of my wish and intention that the partnership now subsisting between us under the said articles shall cease and determine at the expiration of six calendar months computed from the date hereof.

As WITNESS my hand this —— day of ——.

A. B. (*partner*).

To C. D. (*other partner*).

No. XVIII.

NOTICE *of* DISSOLUTION *of* PARTNERSHIP *to be inserted in the London Gazette.* OF DISSOLUTION OF PARTNERSHIP.

NOTICE IS HEREBY GIVEN, that the partnership which has for some time past been carried on by A. B. and C. D. under the firm of ——, at ——, in the trade or business of ——, was this day dissolved by mutual consent.

As WITNESS our hands.

A. B.

C. D.

POWERS OF ATTORNEY.

Definition of a power of attorney and its liability to revocation.

A POWER of attorney is an authority given in due form of law by one person to another to act for him. By common law, a power of attorney is revocable by the grantor at any time, unless given for a valuable consideration (*a*), and it determines on his death (*b*).

Relaxation of rule by statute.

But this rule has been relaxed by recent statutes. Thus by 22 & 23 Vict. c. 35, sect. 26, it is provided as follows:—

Trustees, &c., making payments, &c., under power of attorney, without notice of revocation by death or otherwise, indemnified.

> No trustee, executor, or administrator making any payment or doing any act *bonâ fide* under or in pursuance of any power of attorney, shall be liable for the moneys so paid, or the acts so done, by reason that the person who gave the power of attorney was dead at the time of such payment or act, or had done some act to avoid the power, provided that the fact of the death, or of the doing of such act as last aforesaid, at the time of such payment or act *bonâ fide* done as aforesaid by such trustee, executor, or administrator, was not known to him: provided always that nothing herein contained shall in any manner affect or prejudice the right of any person entitled to the money against the person to whom such payment shall have been made, but that such person so entitled shall have the same remedy against such person to whom such payment shall be made, as he would have had against the trustee, executor, or administrator if the money had not been paid away under such power of attorney.

(*a*) Walsh *v.* Whitcomb, 2 Esp. Ca. 565; Smart *v.* Sandars, 5 Com. Bench, 916.

(*b*) Watson *v.* King, 4 Chamb. 272; Wallace *v.* Cook, 5 Esp. Ca. 117.

And by the Conveyancing Act, 1881, sect. 47, as follows:—

Same indemnity extended to persons acting under powers generally.

(1.) Any person making or doing any payment or act, in good faith, in pursuance of a power of attorney, shall not be liable in respect of the payment or act by reason that before the payment or act the donor of the power had died or become lunatic, of unsound mind, or bankrupt, or had revoked the power, if the fact of death, lunacy, unsoundness of mind, bankruptcy, or revocation was not at the time of the payment or act known to the person making or doing the same.

(2.) But this section shall not affect any right against the payee of any person interested in any money so paid; and that person shall have the like remedy against the payee as he would have had against the payer if the payment had not been made by him.

(3.) This section applies only to payments made and acts done after the commencement of this Act.

And by the Conveyancing Act, 1882, as follows:—

Effect of power of attorney, for value, made absolutely irrevocable.

Sect. 8.—(1.) If a power of attorney, given for valuable consideration, is in the instrument creating the power expressed to be irrevocable, then, in favour of a purchaser,—

(i.) The power shall not be revoked at any time, either by anything done by the donor of the power without the concurrence of the donee of the power, or by the death, marriage, lunacy, unsoundness of mind, or bankruptcy of the donor of the power; and

(ii.) Any act done at any time by the donee of the power, in pursuance of the power, shall be as valid as if anything done by the donor of the power without the concurrence of the donee of the power, or the death, marriage, lunacy, unsoundness of mind, or bankruptcy of the donor of the power, had not been done or happened; and

(iii.) Neither the donee of the power nor the purchaser shall at any time be prejudicially affected by notice of anything done by the donor of the power, without the

concurrence of the donee of the power, or of the death, marriage, lunacy, unsoundness of mind, or bankruptcy of the donor of the power.

(2.) This section applies only to powers of attorney created by instruments executed after the commencement of this Act.

Effect of power of attorney, for value or not, made irrevocable for fixed time.

Sect. 9.—(1.) If a power of attorney, whether given for valuable consideration or not, is in the instrument creating the power expressed to be irrevocable for a fixed time, therein specified, not exceeding one year from the date of the instrument, then, in favour of a purchaser,—

(i.) The power shall not be revoked, for and during that fixed time, either by anything done by the donor of the power without the concurrence of the donee of the power, or by the death, marriage, lunacy, unsoundness of mind, or bankruptcy of the donor of the power; and

(ii.) Any act done within that fixed time by the donee of the power, in pursuance of the power, shall be as valid as if anything done by the donor of the power without the concurrence of the donee of the power, or the death, marriage, lunacy, unsoundness of mind, or bankruptcy of the donor of the power, had not been done or happened; and

(iii.) Neither the donee of the power nor the purchaser shall at any time be prejudicially affected by notice either during or after that fixed time of anything done by the donor of the power during that fixed time, without the concurrence of the donee of the power, or of the death, marriage, lunacy, unsoundness of mind, or bankruptcy of the donor of the power within that fixed time.

(2.) This section applies only to powers of attorney created by instruments executed after the commencement of this Act.

Whether donee should execute power in name of principal.

It was formerly necessary that an attorney should execute his power in the name of the principal, and this is still the more correct and proper form to observe.

It is, however, provided by the Conveyancing Act, 1881, sect. 46, as follows:—

> The donee of a power of attorney may, if he thinks fit, execute or do any assurance, instrument or thing in and with his own name and signature and his own seal, where sealing is required, by the authority of the donor of the power, and every assurance, instrument, and thing so executed and done shall be as effectual in law, to all intents, as if it had been executed or done by the donee of the power in the name and with the signature and seal of the donor thereof.

Instruments containing powers of attorney may be deposited in the Central Office of the Supreme Court, and office copies of instruments so deposited are sufficient evidence of their contents (*a*).

Instruments containing powers of attorney may be deposited in Central Office of Supreme Court.

(*a*) Conveyancing Act, 1881, sect. 48.

No. I.

FROM PERSON GOING ABROAD.

POWER *of* ATTORNEY *from a* PERSON GOING ABROAD (*a*).

KNOW ALL MEN BY THESE PRESENTS, that I, A. B. of, &c. (*appointor*), being about to leave England and to reside abroad for some time, do hereby appoint C. D. of, &c., and E. F. of, &c., and each of them, to be my attorneys and attorney for the purposes hereinafter expressed, that is to say:

Appointment of attorney

to manage lands,

To receive the rents and profits of and manage all the messuages, farms, lands, tenements, and hereditaments of or to which I now am, or at any time or times hereafter shall or may become seised, possessed, or entitled for any estate or interest whatsoever, with liberty in the course of such management to let or demise the said premises, or any part thereof, either from year to year or for any term or number of years, or for any less period than a year, at such rents, and either with or without any fine or premium, and subject to such covenants and conditions as my said attorneys or attorney shall think fit; and with liberty also to accept surrenders of leases or tenancies, to make allowances to and arrangements with lessees, tenants, and others, to cut timber and other trees, whether for repair, sale, or otherwise, to repair and rebuild houses or other buildings, and to insure the same against damage by fire, tempest, or otherwise, to repair fences, to drain or otherwise improve the said premises, or any part thereof, to appoint and employ bailiffs, game-keepers, agents, servants, and others to assist in the management of the said premises, and to remove them and appoint others in their place, and to pay and allow to the persons to be so employed as aforesaid such salaries, wages, or other remuneration as my said attorneys or attorney shall think fit: AND with power also to give effectual receipts and discharges for the rents and profits of the said premises, and

(*a*) The power should of course be adapted to the actual property of the grantor, and to the extent of the authority which he wishes to entrust to his attorney. The above power is more comprehensive than would generally be required. More limited powers are given in the subsequent Precedents.

on non-payment of any rent or the breach of any covenant, agreement, or condition which ought to be observed or performed by any lessee or tenant to take such proceedings by distress, action, or otherwise for recovering such rent or in respect of such breach as my attorneys or attorney shall think fit; And generally to do all such acts or things in or about the management of the said premises as my said attorneys or attorney might do if they or he were or was the absolute owners or owner thereof: Also to use and take all lawful ways and means for recovering any messuages, lands, or hereditaments belonging or supposed to belong to me: Also to ask, demand, sue for, recover and receive all sums of money, goods, effects, and things now or hereafter owing, or payable, or belonging to me, by virtue of any security or upon any balance of accounts, or otherwise howsoever, and to give, sign, and execute receipts, releases, and other discharges for the same respectively: Also to settle, adjust, compound, submit to arbitration, and compromise all actions, accounts, claims, and demands whatsoever, which now are or hereafter shall be depending between me and any person or persons whomsoever, in such manner as my said attorneys or attorney shall think fit: Also to sell any real or personal property now or hereafter belonging to me either by public auction or private contract, and subject to any conditions as to title or otherwise, with power to buy in or to rescind any contract for sale and to resell: Also to exchange any lands or hereditaments for other lands or hereditaments, and to give or receive money for equality of exchange: Also to appear for me in any court of justice in any action or other proceeding which may be instituted against me, and to defend the same or suffer judgment to go against me, or act otherwise in the matter as my said attorneys or attorney shall be advised or think proper: Also to apply any money which may come to the hands of my said attorneys or attorney under these presents in payment of all costs and expenses incurred by them or him in or about the execution of the powers herein contained: Also to deposit any moneys not required for costs and expenses as aforesaid at any bank either in their or his names or name or in my name, and to withdraw the same from time to time: Also to invest any such moneys either in their or his names or name or in my name in any stocks, funds, shares, or securities which they or he

FROM PERSON GOING ABROAD.

to recover money, &c.,

to settle and compromise, &c.,

to sell real or personal property,

to exchange,

to defend actions,

to pay costs and expenses,

to deposit money in bank,

to invest,

FROM PERSON GOING ABROAD.

may think proper, and to vary the investments from time to time: Also to execute and do in my name or otherwise all such deeds and things as they or he may think proper for the purpose of carrying into effect the powers hereinbefore conferred, And generally to manage all my concerns and affairs of every description at their absolute discretion, and as fully and effectually as I could do if I were present and acting in my proper person: And I declare that each one of them the said C. D. and E. F. may act in the several powers and authorities hereby conferred separately and apart from the other of them [And I hereby give and grant unto my said attorneys, and each of them, full power and authority from time to time to appoint one or more substitute or substitutes to do, execute, and perform all or any such matters and things as aforesaid; and the same substitute or substitutes at pleasure to remove, and to appoint another, or others, in his or their place or places] (*d*); and all and whatsoever my said attorneys, or either of them [or their or his substitute or substitutes] (*d*), shall do or cause to be done in or about the premises, I hereby covenant with the said C. D. and E. F. to allow, ratify, and confirm: [And I declare that this power shall be irrevocable for one year from the date hereof (*e*)].

to execute deeds, &c., and generally to manage all my affairs.

Powers to attorneys to appoint substitutes,

and to remove them at pleasure.

In witness, &c.

No. II.

TO RECEIVE RENTS, DISTRAIN, ETC.

POWER *of* Attorney *to receive* Rents, *and distrain for the same, and also to receive* Sums *consigned to the* Donor *of the power* (*f*).

TO ALL TO WHOM THESE PRESENTS SHALL COME, I, A. B. of, &c. (*appointor*), SEND GREETING: Whereas I am seised of and entitled to divers messuages and tenements,

Recite seisin of certain lands by donor.

(*d*) The words within brackets will be omitted where the grantor does not wish to confer on his attorney a power of appointing substitutes.

(*e*) See Conveyancing Act, 1882, s. 9.

(*f*) It is supposed in this case that the grantor has no property beyond the real estate and the consignments from India, which it is necessary to place under the control of an agent.

TO RECEIVE RENTS, DISTRAIN, ETC.

situate in the county of ——, and elsewhere, and am likewise in the habit of receiving money remitted to me from abroad by ——: Now KNOW ALL MEN by these presents, that I hereby constitute and appoint my son, C. D. of, &c., to be my attorney, for me and in my name and on my behalf, to ask, demand, sue for, recover and receive of and from all tenants and other persons who ought to pay the same, all rents and sums of money which now are, or hereafter shall become due or payable from or in respect of the said messuages and tenements, or any of them, and upon receipt thereof, to give and sign good and sufficient receipts and discharges for the same: AND also, if he shall think fit so to do, to make abatements and allowances of rent to any of the tenants of the premises, and to allow deductions for ground rents, land tax, repairs, and other matters, and to settle and adjust all accounts, claims, and demands in relation thereto, and also upon non-payment of the said rents or other moneys, or any of them, or any part or parts thereof, to take such steps and proceedings by distress, action, or otherwise, to recover the same as my said attorney shall think fit: AND also for me and in my name or otherwise, to receive all sums of money whatsoever which are or at any time hereafter may be consigned to me from India or elsewhere, by or on account of the said ——, and on receipt thereof to sign and give good and sufficient receipts and discharges for the same: AND I agree to ratify and confirm all and whatsoever the said C. D. shall lawfully do in and concerning the premises by virtue of these presents: [AND I DECLARE that this power shall be irrevocable for one year from the date hereof] (*g*).

Appointment of attorney

to receive rents,

and distrain for the same

and also to receive all sums consigned to donor of power.

IN WITNESS, &c.

(*g*) See Conveyancing Act, 1882, sect. 9.

No. III.

TO RECEIVE DEBT.

POWER *of* ATTORNEY *to receive a* DEBT.

To receive debt.

KNOW ALL MEN BY THESE PRESENTS, that I, A. B. of, &c. (*appointor*), hereby appoint C. D. of, &c. (*attorney*), to be my attorney, for me and in my name or otherwise to ask, demand, receive, sue for, and recover from X. Y. of, &c., the sum of £—— owing from him to me on a bond dated, &c., and all interest due in respect thereof, and on receipt thereof, or of any part thereof, to give proper receipts and discharges for the same: AND whatsoever the said C. D. shall lawfully do in the premises, I hereby agree to ratify and confirm.

IN WITNESS, &c.

No. IV.

TO SELL LAND.

POWER *of* ATTORNEY *to* SELL *a* LANDED ESTATE, *and* MANAGE *same in meantime* (*a*).

Appointment of attorney to sell estate, with usual powers,

KNOW ALL MEN BY THESE PRESENTS, that I, A. B. of, &c., do hereby appoint C. D. of, &c. (*attorney*), to be my attorney, for me and on my behalf and in my name to sell at such time or times as my said attorney shall think fit, ALL, &c. (*describe shortly the estate*), and the inheritance thereof in fee simple, either together or in lots, and either by public auction or private contract, and either with or without special conditions as to title or otherwise, with liberty to buy in at any sale by auction, to rescind or vary contracts for sale, and to re-sell without being answerable for any loss arising thereby: AND ALSO to execute such deed or deeds for conveying the said premises to any purchaser or purchasers thereof, and also to

and to convey to purchaser and give receipts for purchase-money,

(*a*) See the next Precedent.

give effectual receipts and discharges for the purchase-moneys of the said premises as my said attorney shall think fit: AND ALSO in the meantime and until such sale to receive the rents and profits of the said premises, and to recover the same when in arrear by action or distress, and generally to manage the said premises with liberty in the course of such management to let or demise the said premises or any part thereof either from year to year or for any term of years not exceeding twenty-one years to take effect in possession at and under such rents and covenants as my said attorney shall think fit, and with liberty also to make allowances to and arrangements with tenants, to cut timber and other trees for repairs, sale, or otherwise, to expend money in repairs and improvements and insurances against loss or damage by fire, tempest, or otherwise, and to do such other acts and things in or about the management of the said premises as my attorney shall think fit: AND WHATSOEVER my said attorney shall lawfully do in the premises I hereby agree to ratify and confirm: AND I DECLARE that this power is irrevocable for one year computed from the date hereof.

TO SELL LAND.

and to manage premises until sale, with usual powers.

IN WITNESS, &c.

No. V.

DEED *of* CONVEYANCE *of land by Person resident abroad to a* TRUSTEE *in trust for* SALE *and for* MANAGEMENT *in the meantime (instead of a power of Attorney)* (*a*).

CONVEYANCE IN TRUST INSTEAD OF POWER OF ATTORNEY.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*owner*), of the one part, and C. D. of, &c. (*trustee*), of the other part, WITNESSETH, that for divers good causes and considerations the said A. B., as beneficial owner, hereby

Grant of lands to trustees

(*a*) A purchaser under a power of attorney must (after the expiration of the fixed time for which it is made irrevocable under sect. 9 of the Conveyancing Act, 1882) satisfy himself that the principal is alive at the time when the conveyance is executed. It may therefore be convenient in some cases, instead of giving a power, to vest the property by a conveyance in the intended attorney, upon proper trusts for sale and management in the meantime as in the above Precedent.

Suggestion that a conveyance in trust is sometimes more convenient than a power of attorney.

CONVEYANCE IN TRUST INSTEAD OF POWER OF ATTORNEY.

conveys unto the said C. D., ALL (*parcels*), TO HOLD the same unto and to the use of the said C. D. in fee simple, UPON TRUST that the said C. D., his executors, administrators, or assigns, shall, without any further consent on the part of the said A. B., or any person claiming under him, sell the said premises at such times and in such manner as the trustee or trustees shall think fit: AND shall in the meantime and until such sale receive the rents and profits of the said premises and manage the same, with liberty in the course of such management to let or demise the said premises or any part thereof either from year to year or for any term of years not exceeding twenty-one years, to take effect in possession at and under such rents and covenants as the said trustee or trustees shall think fit, and with liberty also to make allowances to and arrangements with tenants, to cut timber and other trees whether for repairs, sale, or otherwise, to expend money in repairs and improvements, and insurances against loss or damage by fire, tempest, or otherwise, and generally to do such acts and things in or about the management of the said premises as the said trustee or trustees shall think fit: AND IT IS DECLARED that the said trustee or trustees shall with and out of the moneys to arise from any sale or sales as aforesaid, or to be received for rents and profits in the meantime, pay and discharge all costs and expenses incurred in or about any such sale or the management of the said premises or otherwise in or about the execution of the trusts and powers herein contained, and shall stand possessed of the residue of the said sale moneys, rents, and profits, IN TRUST for the said A. B. absolutely, and so that as between the real and personal representatives of the said A. B., the said sale moneys, rents, and profits shall be deemed personal estate whether the premises shall be sold in the lifetime of the said A. B. or after his decease: AND it is declared that for the purposes of the covenant for title implied in a conveyance by virtue of section 7 of the Conveyancing and Law of Property Act, 1881, these presents shall be deemed to be a conveyance for valuable consideration.

in trust to sell with usual powers,

and to receive rents and manage in the meantime.

Declaration of trust of sale moneys and rents

after paying expenses

for grantor as personal estate.

Statutory covenant for title to apply.

IN WITNESS, &c.

No. VI.

POWER *of* ATTORNEY *to Surrender* COPYHOLD HEREDITAMENTS *in favour of a Purchaser.*

TO SURRENDER COPYHOLDS TO PURCHASER.

KNOW ALL MEN that I, A. B. of, &c. (*appointor*), one of the customary or copyhold tenants of the manor of ——, in the county of ——, do hereby appoint C. D. of, &c. (*attorney*), my attorney, for me and in my name, and either at the next or any subsequent court to be holden for the said manor, or out of court to surrender into the hands of the lord or lady, lords or ladies for the time being of the same manor, by the hands and acceptance of the steward or deputy steward, by the rod, according to the custom of the said manor, ALL THOSE three cottages or tenements, situate and being at —— (which said premises are part of the hereditaments to which I was admitted tenant at a court held for the said manor on the —— day of ——), TO THE USE of E. F. of, &c., his heirs and assigns for ever, according to the custom of the said manor: AND FURTHER, for me, the said A. B., and in my name to do and execute all such acts, matters, and things as shall be needful or expedient for making such surrender as aforesaid, and for procuring the said E. F., his heirs or assigns, to be admitted tenant or tenants of the said copyhold premises, and as fully and effectually to all intents and purposes as I myself could or might do if I were personally present: AND I HEREBY agree to ratify and confirm all and whatsoever the said C. D. shall lawfully do or cause to be done by virtue of these presents. AND I declare that this power is irrevocable by me for one year computed from the date hereof.

Attorney to appear at the court and surrender

hereditaments to use of purchaser;

and to do all other necessary acts.

Power to be irrevocable for a year.

IN WITNESS, &c.

No. VII.

RE-ENTER AND EXPEL TENANT.

POWER *of* ATTORNEY *by a* LANDLORD *to re-enter on* PREMISES *and* EXPEL TENANT *from* PREMISES *comprised in a* LEASE.

Power by landlord to attorney to re-enter and expel tenant.

KNOW ALL MEN BY THESE PRESENTS, that I, A. B. of, &c. (*appointor*), do hereby appoint C. D. of, &c., and E. F. of, &c. (*attorneys*), and each of them to be my attorneys and attorney, at my expense, into and upon the messuages, lands, and hereditaments situate at, &c., comprised in and demised by a certain indenture, dated the —— day of ——, and made between me of the one part, and G. H. of the other part, or into and upon any part of the said premises in the name of the whole, to re-enter, and the said G. H., his executors, administrators, and assigns, and all other tenants and occupiers thereof, thereout utterly to expel, remove, and put out, and for the purpose of obtaining possession of the said premises to take all such steps and proceedings at law or otherwise, and to do all such matters and things either in my name, or in the names or name of the said attorneys or attorney as in their or his opinion shall seem expedient, and as I myself might lawfully have taken and done; and I hereby declare that either of them the said C. D. and E. F. shall have full authority to act in the premises singly and without the other of them: AND WHATSOEVER the said C. D. and E. F., or either of them, shall lawfully do or cause to be done in or about the premises, I, the said A. B., hereby covenant with the said C. D. and E. F. to ratify and confirm.

IN WITNESS, &c.

No. VIII.

POWER *of* ATTORNEY *to receive a* LEGACY (*a*).

TO RECEIVE A LEGACY CHARGED ON LANDS.

KNOW ALL MEN BY THESE PRESENTS, that I, A. B. of, &c. (*appointor*), do hereby appoint C. D. of, &c., to be my attorney, for me and in my name to ask, demand, sue for, and receive of and from the executors of the will of G. H. late of, &c., deceased, or other the person or persons liable to pay the same, ALL that legacy of £1,000 given and bequeathed to me by the said will (after deducting the legacy duty thereon), and all interest (if any) due and owing in respect thereof, and to give an effectual receipt and discharge for the said legacy and interest to the person or persons paying the same: AND WHATSOEVER my said attorney shall do in the premises I hereby agree to ratify and confirm: AND I DECLARE that this power is irrevocable by me for one year from the date hereof.

Recite will.

Appointment of attorney to receive legacy.

IN WITNESS, &c.

No. IX.

POWER *of* ATTORNEY (*b*) *to receive a* SHARE *of* RESIDUARY ESTATE *and to* SETTLE ACCOUNTS.

TO RECEIVE SHARE OF RESIDUARY ESTATE.

KNOW ALL MEN BY THESE PRESENTS, that I, A. B. of, &c. (*appointor*), do hereby appoint C. D. of, &c., to be my attorney, for me and in my name to receive of and from the executors and trustees of the will of my father, G. H., late of, &c., deceased, or other the person or persons liable to pay or account for the same, ALL that my one-third share or other my share under the trusts of the said will of and in the proceeds of the real and residuary personal estate of the said testator, which real and residuary personal estate were by the said will vested in trustees in trust for sale and conversion and division among

Appointment of attorney to receive from executors of will the appointor's share of the testator's estate,

(*a*) See 22 & 23 Vict. c. 35, sect. 26, *supra*, p. 774. Under this enactment the executors may safely pay the legacy to the attorney pursuant to the above power, without requiring evidence that the legatee is living.

(*b*) See p. 774.

TO RECEIVE SHARE OF RESIDUARY ESTATE.

the testator's children, as in the said will is mentioned, and of and in the rents and annual income of the said real and residuary personal estate until the sale, conversion, and division thereof, and all other (if any) the moneys payable to me under the said will: And also to examine, approve, and allow, or (at the discretion of my said attorney) to disapprove and disallow, all such accounts as shall from time to time be furnished by the said executors and trustees of and concerning the real and personal estate of the said testator, and the application and disposition thereof, and to compound, submit to arbitration, or otherwise settle all or any questions or disputes which may arise in relation to such accounts or to the testator's estate: And also to permit the said executors and trustees to postpone the sale and conversion of any part of the said real or personal estate, for so long as may be thought desirable: And also upon the distribution of the said estate and the proceeds thereof to execute for me and in my name to the said executors and trustees such receipts, releases, and discharges from all actions, claims, and demands, for and in respect of the testator's estate or my share thereof, or any act, deed, and matter, or thing done or omitted to be done by the said executors and trustees, or any of them, in relation thereto, as my said attorney shall think fit: And whatsoever my said attorney shall lawfully do in the premises I hereby agree to ratify and confirm: And I declare that this power is irrevocable by me for one year from the date hereof.

and to settle accounts, &c.,

to permit postponement of sale and conversion,

to execute releases to executors and trustees.

In witness, &c.

No. X.

TO EXECUTE RECONVEYANCE OR TRANSFER OF MORTGAGE.

POWER *of* Attorney *to execute a* Deed *of* Reconveyance *or* Transfer *of* Mortgage (*a*).

TO ALL TO WHOM THESE PRESENTS SHALL COME, I, A. B. of, &c. (*appointor*), SEND GREETING: Whereas I am the mortgagee under an indenture, dated, &c., and made, &c. (*date and parties*), of certain lands and hereditaments, situate

Recital that appointor is mortgagee, and that money has been called in.

(*a*) This power can easily be adapted to any other description of deed.

in the parish of ——, in the county of ——, therein described, for securing the payment to me of the sum of £——, with interest thereon: And whereas I have required payment of the money secured by the said mortgage, and it is uncertain whether the said E. F. (*mortgagor*) will pay the same himself or whether he will procure some other person or persons to pay the same in consideration of having a transfer of the said mortgage: NOW I, the said A. B., do hereby appoint C. D. of, &c. (*attorney*), to be my true and lawful attorney, for me and in my name to receive of and from the said E. F. or any other person or persons who may pay the same the said principal sum of £—— owing to me upon the security of the said indenture of mortgage, and all interest owing thereon, and to give an effectual receipt for the same: And also upon such receipt to execute for me and in my name, and as my act or deed, any deed which my said attorney shall approve either for reconveying the hereditaments comprised in the said mortgage to the said E. F., or other the person or persons entitled to the equity of redemption thereof, freed and discharged from the said mortgage, and all moneys owing thereon: Or (if the mortgage shall be paid off by any person or persons who may ask for a transfer thereof) for the purpose of transferring to such person or persons, or his or their nominee or nominees, the said principal sum of £——, and all interest due and to become due thereon, and the benefit of all securities for the same, and also for conveying unto and to the use of such person or persons as aforesaid, or his or their nominee or nominees, all and singular the hereditaments comprised in the said mortgage, subject to such right or equity of redemption as shall be subsisting therein: And whatsoever my said attorney shall do in the premises I hereby agree to ratify and confirm: And I declare that this power is irrevocable by me for one year computed from the date hereof.

In witness, &c.

TO EXECUTE RECONVEYANCE OR TRANSFER OF MORTGAGE.

That it is uncertain whether money will be paid off by mortgagor, or to intended transferee.

Appointment of attorney to receive money,

and upon receipt to execute reconveyance or transfer.

No. XI.

TO EXECUTE DEED SET OUT IN SCHEDULE.

POWER *of* ATTORNEY *to* EXECUTE *a particular* DEED *set out in the* SCHEDULE.

TO ALL TO WHOM THESE PRESENTS SHALL COME, I, A. B. of, &c., (*appointor*), SEND GREETING: WHEREAS a deed of family arrangement is proposed to be made and executed between me and my brothers and sisters, and the trustees of the will of X. Y., late of, &c., in relation to the trust estate held upon the trusts of the said will, and a draft of the proposed deed has been prepared, and a copy thereof is annexed hereto by way of schedule: AND WHEREAS the draft has been approved by my solicitor C. D. of, &c., and is also approved by me: NOW THESE PRESENTS WITNESS, that I, the said A. B., hereby appoint the said C. D. to be my attorney to execute for me and in my name, and as my act and deed, the deed to be engrossed from the draft, a copy whereof is annexed hereto by way of schedule: PROVIDED ALWAYS, AND I AUTHORIZE my said attorney (if he shall think fit), to consent to any alterations in the said draft before the engrossment thereof, so as such alterations be not inconsistent with the general purport and effect of the said arrangement as set out in the said draft: AND I DECLARE that the deed which shall be executed by my said attorney in professed exercise of this power shall be deemed to be the deed hereby authorized to be executed by him, notwithstanding any variations therein from the said draft as set out in the schedule hereto, and his execution shall be conclusive evidence that the variations have been approved of by him, and are such as hereby authorized: AND I ALSO DECLARE that this power is irrevocable by me for one year computed from the date hereof.

Recital of proposal to execute deed, of which a draft is set out in schedule.

That draft has been approved by appointor's solicitor.

Appointment of attorney to execute deed.

Proviso authorizing attorney to consent to alterations in draft.

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

MISCELLANEOUS INSTRUMENTS.

No. I.

AGREEMENT *between* LESSOR *and* LESSEE *to refer* DISPUTE *as to alleged* BREACH *of* COVENANT *to* ARBITRATION (*a*). — SUBMISSION TO ARBITRATION.

MEMORANDUM OF AGREEMENT, made the —— day of ——, 18—, BETWEEN A. B. of, &c. (*lessor*), of the one part, and C. D. of, &c. (*lessee*), of the other part (*Recite lease, setting out the covenant to repair*): AND WHEREAS a dispute has arisen between the parties hereto as to whether the said C. D. has duly performed his covenant contained in the said indenture for keeping the said premises in proper repair, it being alleged by the said A. B. and denied by the said C. D. that the said covenant has been broken: AND WHEREAS the parties hereto are desirous of referring the said matter in dispute to arbitration, in the manner hereinafter expressed: NOW IT IS HEREBY AGREED between the parties hereto that it be referred to E. F. of, &c., and G. H. of, &c., to award and determine whether the said C. D. has committed any breach of the covenants contained in the said lease for keeping the said premises in proper repair; and if the said arbitrators shall find that any such breach has been committed, then to award and determine what ought to be done by the said C. D. in order to remedy such breach, and also whether any, and if so what, sum of money ought to be paid by

Parties.

Recite lease and dispute between parties as to repairs,

that parties are desirous to refer matter to arbitration.

Agreement referring it to arbitrators to award whether any breach, and if so, what to be done and paid by lessee.

(*a*) Under the Arbitration Act, 1889 (52 & 53 Vict. c. 49), every submission, unless a contrary intention is expressed, is irrevocable, and has the same effect as if it had been made an order of court (sect. 1). The first schedule to the Act contains provisions for the appointment of an umpire, and as to the time of making the award and other matters, so that it is unnecessary to insert any express provisions as to these matters in the agreement.

SUBMISSION TO ARBITRATION.

First schedule of Arbitration Act to apply with a variation.

Agreement to abide by award.

the said C. D. to the said A. B. by way of compensation: [AND IT IS HEREBY AGREED that the provisions in the First Schedule to the Arbitration Act, 1889, shall apply to this submission, except that one month shall be substituted in sub-section (c) for three months] (*b*): AND the parties hereto agree to observe, perform, and abide by the award to be made pursuant to this submission.

AS WITNESS, &c.

No. II.

AWARD AS TO COMPENSATION FOR LANDS TAKEN BY A RAILWAY COMPANY.

AWARD *as to* PURCHASE *and* COMPENSATION MONEY *to be paid in respect of* LANDS *taken by a* RAILWAY COMPANY (*c*).

Recite agreement to refer matter to arbitration.

TO ALL TO WHOM THESE PRESENTS SHALL COME, I, A. B. of, &c. (*arbitrator*), SEND GREETING: WHEREAS by an instrument in writing dated the —— day of ——, and under the respective hands of C. D. of, &c. (therein stated to be the tenant for life of the lands and hereditaments thereinafter mentioned), and E. F., of, &c., the Secretary of the —— Railway Company (therein and hereinafter called "the company"), it was, in pursuance of the Lands Clauses Consolidation Act, 1845, referred to me as a single arbitrator to award and determine what sum of money ought to be paid by the company for the purchase of the inheritance in fee simple of the lands and hereditaments specified in the schedule thereunder written and coloured pink in the map thereunto annexed (of which schedule and map the schedule and map hereunder written and hereunto annexed are respectively copies), and also what further sum of money (if any) ought to be paid by the company as or by way of compensation for or in respect of the

(*b*) This may be omitted, if the parties are satisfied with three months as the period within which the award is to be made.

(*c*) See 8 Vict. c. 18, s. 25.

damage (if any) to be sustained by the owner of the said lands and hereditaments by reason of the severing of the same lands and hereditaments from the other lands of such owner, or otherwise injuriously affecting such other lands by the exercise by the company of the powers of their Act or any Act incorporated therewith: NOW KNOW YE, that I, the said A. B., having taken upon myself the burthen of the said reference, and having, before entering into the consideration of the matters referred to me as aforesaid, duly made and subscribed in the presence of a justice duly authorized in that behalf, the declaration required by the said Lands Clauses Consolidation Act, 1845 (which said declaration is hereunto annexed), and having viewed the lands and hereditaments hereinafter mentioned or referred to, and having heard what was alleged by or on behalf of the said parties respectively, and having heard and considered all such evidence as hath been produced before me, and having duly weighed and considered all and singular the matters and things to me referred as aforesaid, Do make and publish this my award in writing of and concerning the said matters, as follows (that is to say): I DO AWARD AND DETERMINE that the sum of £—— ought to be paid by the company for the purchase of the inheritance in fee simple of the said lands and hereditaments, and that the further sum of £—— ought to be paid by the company as or by way of compensation for or in respect of the damage to be sustained by the owner of the said lands and hereditaments by reason of the severing of the same from the other lands of such owner, or otherwise injuriously affecting such other lands by the exercise by the company of the powers of their Act or any Act incorporated therewith.

AWARD AS TO COMPENSATION FOR LANDS TAKEN BY A RAILWAY COMPANY.

Award of arbitrator.

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

No. III.

WARRANT OF ATTORNEY TO CONFESS JUDGMENT.

WARRANT *of* ATTORNEY *to confess* JUDGMENT (*a*).

Warrant of attorney to confess judgment.

To E. F. of, &c., and G. H. of, &c., Solicitors of Her Majesty's Supreme Court of Judicature, jointly and severally, or to any other solicitor of the same Court. THESE ARE TO DESIRE AND AUTHORIZE you the solicitors above named, or either of you, or any other solicitor of the said Court, to appear for me, A. B. of, &c., in the High Court of Justice (Queen's Bench Division), in an action of debt for £—— for money lent, at the suit of C. D. of, &c., and thereupon to confess the said action, or suffer a judgment to pass against me in the same action, and to be thereupon forthwith entered up against me of record of the same Court for the sum of £—— and costs of suit: AND I, the said A. B., hereby further authorize and empower you or any one of you, after the said judgment shall be entered up as aforesaid, for me and in my name, and as my act and deed, to sign, seal, and execute a good and sufficient release in the law to the said C. D. of all and all manner of errors, defects, and imperfections whatsoever, had, made, committed, done, or suffered, or to be had, made, committed, done, or suffered in, about, or concerning the aforesaid judgment, or the proceedings relating thereto: AND whatsoever you, or any one of you, shall do or cause to be done in the premises, or any of them, this shall be to you and to every of you a sufficient warrant or authority.

IN WITNESS whereof I have hereunto set my hand and seal the —— day of ——, in the year of our Lord, 18—.

A. B.

SIGNED, sealed, and delivered by the said A. B. in the presence of L. M., of ——, in the county of ——, one of the solicitors of Her Majesty's Supreme Court of Judicature,

(*a*) A warrant of attorney to confess and enter up a judgment given as security for the payment or repayment of money, or for the transfer or re-transfer of stock, is liable to the same stamp duty as a mortgage for the same purpose. A warrant of attorney of any other kind is liable to a stamp duty of 10*s*. (33 & 34 Vict. c. 97.)

WARRANT OF ATTORNEY TO CONFESS JUDGMENT.

expressly named by the said A. B. as his solicitor, and attending at his request to inform him of the nature and effect of the above instrument; and I, the said L. M., declare that I have informed the said A. B. of the nature and effect of the said instrument before his execution thereof, and that as his solicitor I subscribe my name as a witness to the due execution hereof (*b*).

L. M. [*Signature of defendant's solicitor.*]

(*b*) By the Debtors Act, 1869 (32 & 33 Vict. c. 62), it is provided that a warrant of attorney to confess judgment in any personal action or *cognovit actionem* given by any person shall not be of any force unless there shall be present some attorney of one of the superior courts on behalf of such person expressly named by him, and attending at his request to inform him of the nature and effect of such warrant or cognovit before the same is executed; which attorney shall subscribe his name as a witness to the due execution thereof, and thereby declare himself to be attorney for the person executing the same, and state that he subscribes as such attorney (sect. 24); and a warrant of attorney not executed in manner aforesaid shall not be rendered valid by proof that the person executing the same did in fact understand the nature and effect thereof, or was fully informed of the same (sect. 25). And sect. 26 provides that where in an action a warrant of attorney to confess judgment is given, and the same, or a true copy thereof, is not filed in the Queen's Bench within twenty-one days after the execution thereof, as required by 3 Geo. 4, cap. 39, the same shall be deemed fraudulent and void; and if any such warrant of attorney was given subject to any defeasance or condition, such defeasance or condition shall be written on the same paper or parchment with the warrant before the filing thereof, otherwise the warrant shall be void. The above enactments are substituted for similar clauses in Acts of Parliament repealed by the Act 32 & 33 Vict. c. 83.

By the Judicature Act, 1873, sect. 87, all persons admitted as solicitors, attorneys, or proctors are to be called solicitors of the Supreme Court of Judicature.

No. IV.

DEFEASANCE ON WARRANT OF ATTORNEY.

DEFEASANCE *to be indorsed on the* WARRANT *of* ATTORNEY *contained in the* LAST PRECEDENT, *given to secure the payment of* £—— *and Interest.*

Recite mortgage of policy to secure £— and interest.

WHEREAS by an indenture bearing even date with the within-written warrant of attorney, and made between (*parties*), in consideration of the sum of £1,000 paid by the said C. D. to the said A. B. the said A. B. has assigned a policy of assurance on his life for the sum of £——, effected in the —— Assurance Office, and numbered ——, and the moneys thereby assured, unto the said C. D., by way of security for the payment of the sum of £1,000, with interest for the same after the rate of £5 per cent. per annum, on the —— day of —— next: AND the indenture now in recital contains covenants by the said A. B. for the payment of the said sum of £1,000, and the interest thereof, and to keep on foot the said policy, and to effect a new policy in case the subsisting policy shall become void, and to repay to the said C. D., his executors, administrators, or assigns, all moneys (if any) paid by him or them in or about the keeping on foot the said policy or in effecting or keeping on foot any such new policy as aforesaid: NOW BE IT REMEMBERED, that the within-written warrant of attorney is given as a collateral security for the payment of the principal money and interest secured by the said indenture: AND it is hereby declared that no execution shall be issued or taken out upon the judgment or judgments to be confessed in pursuance or by virtue of the said warrant of attorney, unless and until default shall be made in payment of the principal money and interest secured by the said indenture, or some part thereof respectively, contrary to the true intent and meaning of the said indenture: AND that in case default shall be made in payment of the said principal money and interest, or any part thereof respectively, contrary to the true intent and meaning of the said indenture, then and in such case it shall be lawful for the said C. D., his executors, administrators, or assigns, to sue out such execution or executions, or other process, upon or by virtue of the said judgment or judgments, or any of them, as

Defeasance.

he or they shall think fit or be advised for the recovery of such principal money and interest respectively, and all costs, charges, and expenses which he or they shall sustain or be put unto by reason of the non-payment of such principal money and interest respectively, or any part thereof: And also that after the full payment to the said C. D., his executors, administrators, or assigns, of the said principal money and interest, and of all such costs, charges, and expenses, as aforesaid, he the said C. D., his executors, administrators, or assigns shall and will on the request and at the cost and charges of the said A. B., his heirs, executors, or administrators, acknowledge satisfaction of the said judgment or judgments upon the record or records thereof, in due form of law, and do all further or other acts, matters, or things which may be reasonably required for releasing and extinguishing all right and remedy upon the said judgment or judgments, and all executions thereupon respectively.

DEFEASANCE ON WARRANT OF ATTORNEY.

In witness, &c.

No. V.

WARRANT *of* Attorney *to enter up Satisfaction of* Judgment.

WARRANT TO ENTER UP SATISFACTION OF JUDGMENT.

To A. B. of, &c., and C. D. of, &c., Solicitors of the Supreme Court of Judicature, jointly and severally: Whereas (*here recite warrant of attorney by E. F. to G. H. to appear for E. F. in an action for debt for £—— for money borrowed, at the suit of L. M., of, &c., and to confess judgment against E. F. for the sum of £——, and costs of suit*): And whereas, pursuant to the said recited warrant of attorney, on the —— day of ——, a judgment was duly entered up at the suit of the said L. M. against the said E. F. for the sum of £—— and costs of suit: And whereas the said sum of £—— and all interest thereon, and all other moneys secured by the said judgment, have been duly paid by the said

That judgment was entered up.

That moneys secured by judgment had been paid.

WARRANT TO ENTER UP SATISFACTION OF JUDGMENT.

L. M., as he doth hereby admit: NOW THESE ARE TO DESIRE you, the attorneys above named, or either of you, forthwith to enter up upon record of the said Court satisfaction of the said judgment: AND FOR whatsoever you or either of you shall do in the premises, this shall be a sufficient warrant or authority.

Power to enter upsatisfaction.

IN WITNESS, &c.

No. VI.

COVENANT NOT TO BUILD ON LAND.

DEED *of* COVENANT *not to* ERECT *any* BUILDING *on a certain part of* COVENANTOR'S PROPERTY, *and* OBLIGATION *in the sum of* £—— *by way of* DAMAGES *for due* PERFORMANCE *of the same.*

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*covenantor*), of the one part, and C. D. of, &c. (*covenantee*), of the other part: WHEREAS by an indenture dated the —— day of ——, and made between (*parties*), ALL, &c. (*parcels*), and which hereditaments are more particularly delineated and described in the map or plan thereof drawn in the margin of these presents, and are in such map or plan coloured ——, were conveyed unto and to the use of the said A. B. in fee simple: AND WHEREAS the said C. D. is the owner and occupier of the messuage and lands situate on the —— side of the hereditaments comprised in the hereinbefore recited indenture, and which messuage and land are also delineated and described in such map or plan as aforesaid, and are therein coloured ——, and in order to protect himself and his said premises from annoyance or injury by the owner of the hereditaments comprised in the hereinbefore recited indenture, from the erection of buildings or otherwise, he the said C. D. proposed, and had determined to bid for and use his best endeavours to become the purchaser of the same hereditaments: AND WHEREAS it was afterwards arranged between the said C. D. and A. B. that instead of purchasing or attempting to

Recite that covenantee is owner of adjoining hereditaments, and that to protect himself he had determined to bid for hereditaments which were in fact sold to covenantor.

Arrangement that covenantor should

COVENANT NOT TO BUILD ON LAND.

purchase the hereditaments aforesaid, the said C. D. should permit the said A. B. to become the purchaser thereof, and the said C. D. consented to the said arrangement, and to forego his said intention of bidding for and attempting to become the purchaser of the said hereditaments in favour of the said A. B. upon the terms, and in consideration and under an express agreement, that the said A. B. should, in the event which happened of his becoming such purchaser as aforesaid, secure to the said C. D., for and during the period hereinafter mentioned, the same or the like protection from annoyance or injury by the erection of buildings on the hereditaments aforesaid, or on the part thereof which on the map or plan aforesaid is coloured ——, or by any other ways or means as he the said C. D. might or would have had if he had carried his said intention into effect, and had himself become the purchaser of the said hereditaments; and for effecting the purposes aforesaid, it hath been further agreed that the said A. B. shall enter into the covenant and obligation hereinafter contained: NOW THIS INDENTURE WITNESSETH, that in pursuance of the aforesaid agreement, and in consideration of the premises, the said A. B. hereby covenants with the said C. D. that he the said A. B., or any person or persons deriving title under him to the hereditaments so purchased by him as aforesaid, or any part thereof, shall not nor will at any time or times during the joint lives of the said C. D. and —— his wife, or during the life of the survivor of them, erect or set up, or permit to be erected or set up on any part or parts of the said hereditaments or premises comprised in the hereinbefore recited indenture, and in the said map or plan coloured ——, any messuage, erection or building of any class, character, or description whatsoever, but shall and will, at all times during such period as aforesaid, maintain and keep that part of the said hereditaments aforesaid which in the said map or plan is coloured —— in its present open state and condition: AND FURTHER that the said A. B., or any such other person or persons as aforesaid, shall not nor will, at any time during such period as aforesaid, carry on or permit to be carried on upon the said last-mentioned hereditaments or any part thereof, any trade, business, or employment whatsoever, or do or permit to be done therein any other act or thing which may be an annoyance to the said C. D. and his wife, or either of them,

purchase the said hereditaments so sold to him, and enter into covenants with covenantee.

Covenantor agrees not to build on lands purchased by him for a certain period;

nor carry on any annoying business on such premises for the like period.

COVENANT NOT TO BUILD ON LAND.

or to any tenant or occupier under them, him, or her of the said hereditaments in the said map or plan coloured ——, or any part thereof, or which shall in any manner affect or hinder their, his, or her possession or enjoyment of the said hereditaments, in like manner in all respects as the said hereditaments are now held and enjoyed by him the said C. D.: AND FOR THE DUE PERFORMANCE by the said A. B, and such person or persons as aforesaid, of the covenants hereinbefore contained, the said A. B. hereby binds himself unto the said C. D. in the sum of £——, as or by way of liquidated damages, now mutually assessed by them the said parties hereto, for the non-performance of the aforesaid covenants, or any or either of them, and not by way of penalty.

Sum recoverable as liquidated damages on breach of aforesaid covenants.

IN WITNESS, &c.

VII.

ASSENT OF EXECUTOR.

ASSENT *by an* EXECUTOR *to* BEQUESTS *of* LEASEHOLD *and other* PERSONAL ESTATE.

KNOW ALL MEN BY THESE PRESENTS, that I, A. B. of, &c., being the executor of the will of X. Y. late of, &c., which will is dated the —— day of ——, 18—, and was proved by me in the Principal Registry attached to the Probate Division of the High Court of Justice on the —— day of ——, 18—, hereby declare that the funeral and testamentary expenses and debts of the said X. Y., so far as the same have come to my knowledge, have been paid and satisfied, and I assent to the bequests of leasehold property and other personal estate made by the said will.

Executor declares that all debts have been paid, and assents to bequests.

IN WITNESS, &c.

No. VIII.

APPOINTMENT *by an* INFANT *of a* GUARDIAN *of his* PERSON *and* ESTATE (*a*).

APPOINTMENT BY INFANT OF GUARDIAN.

KNOW ALL MEN BY THESE PRESENTS, that I, A. B. of, &c. (*infant*), being now of the age of —— years or thereabouts, hereby appoint C. D. of, &c. (*guardian*), to be the guardian of my person and estate until I shall attain the age of twenty-one years.

As WITNESS my hand this —— day of ——, 18—.

(Signed) A. B.

No. IX.

PRESENTATION *to a* BENEFICE.

PRESENTATION TO A BENEFICE.

TO THE RIGHT REVEREND FATHER IN GOD, ——, by Divine permission Lord Bishop of ——, or to his Vicar, general or spiritual, or to any other person having or that shall have sufficient authority in this behalf, I, A. B. of, &c., the true and undoubted patron of the rectory of ——, in the county of ——, within your lordship's diocese and jurisdiction, DO HEREBY PRESENT to your lordship, and to the said rectory of —— aforesaid, now become vacant by the death of the Rev. C. D., clerk, the last incumbent thereof, and to my presentation

Presentation to the rectory.

(*a*) When an heir in socage has no testamentary guardian, he may at the age of fourteen years choose a guardian for the remainder of his minority (Co. Litt. 78 b; Macpherson on Infants, 76). The election by an infant of his own guardian does not supersede the authority of the Court, and as it is doubtful what are the powers of a guardian so elected, this course is seldom resorted to.

Infant of age of fourteen years may appoint guardian.

PRESENTATION TO A BENEFICE.

in full right belonging, the Rev. E. F., clerk, now of ——, in the county of ——, humbly praying that your lordship will be graciouly pleased to admit and canonically institute him the said E. F. in and to the said rectory of the parish church of —— aforesaid, and invest him with all and singular the property, rights, members, and appurtenants thereunto belonging, and to cause him to be inducted into the real, actual, and corporeal possession thereof, and to do all other things which to your pastoral office may in this case appertain and belong.

In witness, &c.

No. X.

BY EXECUTORS TO CREDITORS.

NOTICE *by* Executors *to the* Creditors *of a* Testator *to send in particulars of their Debts.*

A. B., deceased.—Pursuant to an Act of Parliament made and passed in the twenty-second and twenty-third years of the reign of her present Majesty, cap. 35, intituled "An Act to further amend the Law of Property and to relieve Trustees" (*a*), notice is hereby given that all creditors and persons having any claims or demands upon or against the estate of A. B., late of ——, in the county of ——, deceased (who died on or about the ——

Executor after advertising for creditors may distribute assets without liability to any creditors who do not give notice of their claims.

(*a*) By 22 & 23 Vict. c. 35, s. 29, it is provided that where an executor or administrator shall have given such or the like notices as in the opinion of the court in which such executor or administrator is sought to be charged would have been given by the Court of Chancery in an administration suit for creditors and others to send in to the executor or administrator their claims against the estate of the testator or intestate, such executor or administrator shall at the expiration of the time named in the said notices, or the last of the said notices, for sending in such claims, be at liberty to distribute the assets of the testator or intestate, or any part thereof, amongst the parties entitled thereto, having regard to the claims of which such executor or administrator has then notice, and shall not be liable for the assets, or any part thereof, so distributed to any person of whose claim such executor or administrator shall not have had notice at the time of distribution of the said assets, or a part thereof, as the case may be; but nothing in the present Act contained shall prejudice the right of any creditor or claimant to follow the assets, or any part thereof, into the hands of the person or persons who may have received the same respectively.

day of ——, and whose will was proved by C. D., of ——, and E. F., of ——, the executors therein named, on the —— day of ——, in the principal registry of the Probate Division of the High Court of Justice), are hereby required to send in the particulars of their claims and demands to the said C. D. and E. F., or to the undersigned, their solicitors, on or before the —— day of ——, and notice is hereby also given that after that day the said executors will proceed to distribute the assets of the deceased among the parties entitled thereto, having regard only to the claims of which the said executors shall then have notice, and that they will not be liable for the assets or any part thereof so distributed to any person of whose debt or claim they shall not then have had notice. Dated this —— day of ——.

BY EXECUTORS TO CREDITORS.

M. N. and O. P. (*solicitors for the executors*).

No. XI.

BUILDING CONTRACT.

BUILDING CONTRACT.

MEMORANDUM OF AGREEMENT made the —— day of ——, Between A. B. of &c., and C. D. of &c., builders and co-partners (hereinafter called the "builders") of the first part, and E. F. of &c., G. H. of &c., and I. K. of &c., carrying on the business of bankers, in copartnership under the name or style of E. F. and Company (hereinafter called the "owners"), of the second part. Whereas the owners, being desirous that a banking-house with suitable offices shall be erected on a certain piece of ground belonging to them, situate in —— Street, in the city of ——, have appointed L. M. of &c., to be the architect for that purpose. And whereas plans, drawings, and elevations of the said intended banking-house and offices, and a specification of the works to be done, and of the materials to be provided in and for the erection of the same, have been pre-

Parties.

Recite that owners are desirous of having a banking-house erected.

Appointment of architect.

That plans, &c. have been prepared.

BUILDING CONTRACT.

pared by the said L. M., and approved of by the owners. And whereas the builders are willing to contract for the execution of the said works for the sum of £——. And whereas the said plans, drawings, elevations, and specification have been signed by the builders and by the said L. M., and are annexed by way of schedule to this agreement, and duplicates of the same respectively are intended to be deposited with the clerk of the works to be employed as hereinafter mentioned, for the use and inspection of the builders, who are to have access thereto at all times for the purpose of carrying on the said works. And whereas it is intended that the due performance of this contract shall be secured by the joint and several bond of the builders, and of N. O. of, &c., and P. Q. of, &c., as sureties for the builders:

That builders are willing to contract.

That plans, &c. have been signed by builders and architect.

Agreement that contract shall be secured by bond.

Now it is hereby agreed between the parties hereto as follows:

1. The builders will well and substantially erect and complete the said banking-house and offices in a good, lasting, and workmanlike manner, according to the instructions and directions and in the manner expressed or contained in the said specification, plans, drawings, and elevations; and will provide, execute, perform, and fully complete all and singular the materials and works respectively specified, required and set forth in the said specification, plans, drawings, and elevations, or to be implied therefrom, or to be incidental thereto, or to be hereafter specified or required in such explanatory instructions and drawings (being in conformity with the said original specification, plans, drawings, and elevations), and also in such additional instructions and drawings (not being so in conformity as aforesaid) as shall, from time to time, during the progress of the said works hereby contracted for, be provided by the architect; and will complete all the said works with the materials of the best quality, and in the most substantial and workmanlike manner, and to the satisfaction of the architect, without reference to any other person; and will, in all respects, comply with and abide by the true intent and meaning of the said specification, plans, drawings, and elevations, and of this agreement.

Builders to erect banking-house according to specification, &c.

2. The builders will cover in the roof of the said banking-house on or before the —— day of ——, and will finish and complete the said banking-house and offices on or before the

To cover in and complete by certain dates, or

—— day of ——; and if the said banking-house and offices shall not be completed on or before the said —— day of —— the builders shall forfeit, out of the moneys which shall be due to them by virtue of this agreement, the sum of £10 for every day which shall elapse after the —— day of ——, until the said banking-house and offices shall be completed. PROVIDED ALWAYS, that in case the builders shall be prevented by any strike among the workmen from complying with this article, the architect may extend the time for the completion of the works for such reasonable period as he may think fit.

BUILDING CONTRACT.

otherwise to pay a fixed penalty.

3. ALL bricks, timber, and other materials which shall have been brought upon the said premises by the builders for the purpose of erecting the said buildings shall be considered as immediately attached to and belonging to the said premises, and shall not be removed without the consent of the owners or the architect.

Materials not to be removed.

4. IF the builders shall in the opinion of the architect fail to proceed with the said works with all reasonable speed according to the terms and conditions of this present contract, it shall be lawful for the architect to leave or cause to be left at the usual place of abode or business of the builders, or any of them, or of their sureties or either of them, a notice in writing for the builders to proceed regularly and effectually with the said works; and in case the builders shall, for seven days after such notice is so left as aforesaid, make default in regularly and effectually proceeding with the said works, or in case the builders shall become bankrupt, then and in either of such cases it shall be lawful for the architect to employ any other workmen, either by contract or measure and value or otherwise, to proceed with the said works and complete the same, and pay to the said workmen out of the moneys which shall be then due to the builders on account of this contract, the amount of their charges for the same and for all necessary materials to be found and provided for such completion; and the moneys which previously to such default shall have been paid to the builders on account or in respect of any work or materials then already done, executed, or provided by them, shall be considered as the full payment and satisfaction, not only for the said work and materials in respect of which such payments shall have been made, but also for any other work and materials which the builders shall

If builders become bankrupt, &c., architect may, after notice, employ others to complete works.

BUILDING CONTRACT.

then have done, executed, or provided, although no such payment shall have been previously made in respect thereof; and all the balance and moneys whatsoever which then or afterwards would have become payable or due to the builders under this present contract, if this present clause had not been inserted, together with all the materials then delivered for the purpose of the works hereby contracted for and then being upon or about the site of the said banking-house and offices, shall, upon such default as aforesaid, become the absolute property of the owners; and if the said balance, moneys, and materials so forfeited and to become the property of the owners as aforesaid be insufficient to cover such charges for workmen and materials as are last hereinbefore directed to be paid thereout, then and in such case the builders shall and will make good and pay such deficiency upon demand.

Architect may remove workmen for incompetency or other causes.

5. If the architect shall at any time or times consider any of the workmen employed by the builders on the works as in anywise incompetent, or as acting improperly, it shall in every such case be lawful for the architect to discharge such workman or workmen, and the builders shall without delay put another workman or other workmen in his or their place.

Architect to appoint a clerk of the works.

6. The architect may appoint a suitable person to be clerk of the works, to superintend the works hereby contracted for, and to be constantly on the premises during their progress; and the clerk shall be paid by the owners.

Architect or clerk of the works may remove unsound materials.

7. In case any of the materials to be brought on the said premises by the said builders shall be considered by the architect or the clerk of the works unsound or in any respect improper, the builders will, upon notice in writing to them or their foreman on the premises, given by the architect or clerk of the works, cause the same to be removed from off the ground, and proceed with the said works with materials corresponding with the said specification and instructions, and approved of by the architect; and in default of such removal within three days after such last-mentioned notice, it shall be lawful for the architect to cause the same to be removed to such place or places as he may think proper, without being in anywise answerable or accountable for any loss or damage that shall happen to any materials so removed as aforesaid, and to cause proper materials to be substituted for the same, and to pay all expenses attending

such removal and substitution out of the moneys which shall become due to the builders by virtue of this contract.

Builders to take down unsound work and rebuild.

8. In case the architect shall consider any part of the said works to be executed in an unsound and improper manner, the builders will cause the same immediately to be taken down and executed in a proper manner, and to the satisfaction of the architect, without any extra charge or expense whatever.

Power to architect, or parties of the second part, to direct additions or alterations.

9. If the architect or the owners shall think proper at any time or times to make any alterations or additions to or omissions in the works hereby contracted for, he or they shall give to the builders written instructions for such alterations, additions, or omissions, signed by the architect; but the builders shall not be considered to have authority for any alteration, addition, or omission, or to make any claim for the value or otherwise in respect thereof, without such written instructions so signed as aforesaid; and should any alteration or addition be charged for or brought into any day account, the said day account shall be delivered at the office of the architect on the Tuesday morning next ensuing after such day work may have been done, signed by the clerk of the works, and no account unless so signed and delivered shall be admitted by the architect.

Value of alterations, &c. to be ascertained and added to original contract money.

10. Any such alteration, addition, or omission shall not vacate this present contract, but shall be ascertained by an admeasurement or valuation, to be made by the architect, and the value thereof so ascertained shall be added to or deducted from the said sum of £——, as the case may be, and the addition in value (if any) shall be paid for in the same manner and at the same time as hereinafter is expressed for the payment of the ultimate balance of the said sum of £——.

Any unauthorized deviations to be corrected at expense of builders.

11. Any deviation made in the said works from the said original plans, drawings, elevations, and specification (except such deviations as shall be so ordered as last aforesaid) shall be altered and corrected at the costs and expenses of the builders.

Builders to repair damage.

12. Any damage arising from accidents or carelessness of workmen or otherwise to the said works hereby contracted for, or to the materials or implements therein used, shall be borne and effectually made good by the builders at their own costs and charges.

Builders to insure.

13. The builders shall at their own costs and charges insure, in some or one of the offices for insurance against fire in London

BUILDING CONTRACT.

or Westminster, to be approved of by the owners, and in the joint names of the builders and of some person appointed in that behalf by the owners, the said buildings from loss or damage by fire in the sum of £——, and shall continue such insurance until the architect shall certify the said banking-house and offices to be completed.

Builders to pay fees of district surveyor, and generally to execute all works described in specification, &c., or to be implied therefrom.

14. THE builders shall pay all the fees of the district surveyor or other fees or official demands arising from the execution of the said works, and will generally do, execute, and provide not only all the works and materials described and specified in the said plans, drawings, elevations, and specification respectively, but likewise all such works and materials as are necessarily implied or may be reasonably inferred in or from the said plans, drawings, elevations, and specification respectively, for the erection and completion of the said buildings, with the offices and appurtenances, although the same may not happen to be therein expressly mentioned as to be done by the builders, the true intent and meaning of these presents being that the works and materials hereby contracted to be done, executed, and provided, shall include all that is requisite for the building and completing the said building and offices according to the said plans, drawings, elevations, and specification.

Builders not to make sub-contract without consent.

15. THE builders will not, unless with the consent of the architect, make any sub-contract for the execution of the works hereby contracted for, or any part thereof, nor, unless with such consent as aforesaid, assign or underlet this present contract.

The contract-money to be paid by instalments.

16. THE said sum of £—— shall be paid to the builders in manner following (that is to say), £—— part thereof shall be paid by twelve instalments of £—— each, upon the certificate from time to time of the architect as aforesaid, that work and materials to a sufficient amount shall have been done, executed, or provided by the builders to the satisfaction of the architect and £——, the balance of the said sum of £——, shall be paid within three calendar months after the whole of the said works shall be completed and finished, and the accounts made up.

Balance to be paid on certificate of architect of completion of works.

17. THE builders shall not be entitled to demand or receive the said balance of £—— until the architect shall certify under his hand that the whole of the said works have been completed and finished to his satisfaction.

BUILDING CONTRACT.

Decision of architect to be final.

18. The decision of the architect with respect to the amount, state, and condition, of the works actually executed, and also in respect to any and every question that may arise concerning the construction of the present contract, or the said plans, drawings, elevations, and specification, or the execution of the works hereby contracted for, or in anywise relating thereto, shall be final and without appeal.

19. The expression "the architect" in this agreement means the said L. M., or other the architect for the time being employed by the owner for the purposes of this agreement.

In witness, &c.

APPENDIX.

RULES OF THE SUPREME COURT UNDER THE SETTLED LAND ACT, 1882.

1. The expression "the Act" used in these rules means the Settled Land Act, 1882.

Words defined by the Act when used in these rules have the same meanings as in the Act.

The expression "the tenant for life" includes the tenant for life as defined by the Act, and any person having the powers of a tenant for life under the Act.

2. All applications to the Court under the Act may be made by summons in chambers; and if in any case a petition shall be presented without the direction of the judge, no further costs shall be allowed than would be allowed upon a summons.

3. The forms in the appendix to these rules are to be followed as far as possible, with such modification as the circumstances require. All summonses, petitions, affidavits, and other proceedings under the Act are to be entitled according to Form I. in the Appendix.

4. The persons to be served with notice of applications to the Court shall, in the first instance, be as follows:—

In the case of applications by the tenant for life under sections 15 and 34, the trustees.

In the case of applications under section 38, the trustees (if any), and the tenant for life if not the applicant.

In the case of applications under section 44, the tenant for life, or the trustees, as the case may be.

No other person shall in the first instance be served. Except as hereinbefore provided when an application under the Act is

made by any person other than the tenant for life, the tenant for life alone shall be served in the first instance.

5. Except in the cases mentioned in the last rule, applications by a tenant for life shall not in the first instance be served on any person.

6. The judge may require notice of any application under the Act to be served upon such persons as he thinks fit, and may give all necessary directions as to the persons (if any) to be served, and such directions may be added to or varied from time to time as the case may require. Where a petition is presented, the petitioner may, after the petition has been filed, apply by summons in chambers (Appendix, Form XXIII.) for directions with regard to the persons on whom the petition ought to be served. If any person not already served is directed to be served with notice of an application, the application shall stand over generally, or until such time as the judge directs. The judge may in any particular case, upon such terms (if any) as he thinks fit, dispense with service upon any person upon whom, under these rules, or under any direction of the judge, any application is to be served.

7. It shall be sufficient upon any application under the Act to verify by affidavit the title of the tenant for life and trustees or other persons interested in the application unless the judge in any particular case requires further evidence. Such affidavit may be in the form or to the effect of Form No. VIII. in the Appendix.

8. Any sale authorized or directed by the Court under the Act, shall be carried into effect out of Court, unless the judge shall otherwise order, and generally in such manner as the judge may direct.

9. Where the Court authorizes generally the tenant for life to make from time to time leases or grants for building or mining purposes under section 10 of the Act, the order shall not direct any particular lease or grant to be settled or approved by the judge unless the judge shall consider that there is some special reason why such lease or grant should be settled or approved by him. Where the Court authorizes any such lease

or grant in any particular case, or where the Court authorizes a lease under section 15 of the Act, the order may either approve a lease or grant already prepared or may direct that the lease or grant shall contain conditions specified in the order or such conditions as may be approved by the judge at chambers without directing the lease or grant to be settled by the judge.

10. Any person directed by the tenant for life to pay into Court any capital money arising under the Act may apply by summons at chambers for leave to pay the money into Court. (Appendix, Forms IX., X., XI.)

11. The summons shall be supported by an affidavit setting forth—

1. The name and address of the person desiring to make the payment.
2. The place where he is to be served with notice of any proceeding relating to the money.
3. The amount of money to be paid into Court and the account to the credit of which it is to be placed.
4. The name and address of the tenant for life under the settlement by whose direction the money is to be paid into Court.
5. The short particulars of the transaction in respect of which the money is payable.

12. The order made upon the summons for payment into Court may contain directions for investment of the money on any securities authorized by section 21, sub-section 1 of the Act, and for payment of the dividends to the tenant for life, either forthwith or upon production of the consent in writing of the applicant; the signature to such consent to be verified by the affidavit of a solicitor. But if the transaction in respect of which the money arises is not completed at the date of payment into Court, the money shall not, without the consent of the applicant, be ordered to be invested in any securities other than those upon which cash under the control of the Court may be invested.

13. Money paid into Court under the Act shall be paid to an account, to be entitled in the matter of the settlement, with a short description of the mode in which the money arises if it is

necessary or desirable to identify it, and in the matter of the Act. (Appendix, Forms IX., X., and XI.)

14. Any person paying into Court any capital money arising under the Act shall be entitled first to deduct the costs of paying the money into Court.

15. In all cases not provided for by the Act or these rules, the existing practice of the Court as to costs and otherwise, so far as the same may be applicable, shall apply to proceedings under the Act.

16. The fees and allowances to solicitors of the Court in respect to proceedings under the Act shall be those provided by the Rules of the Supreme Court as to costs for the time being in force, so far as they are applicable to such proceedings.

17. The fees to be taken by the officers of the Court in respect to proceedings under the Act shall be those provided by the Rules of the Supreme Court as to court fees for the time being in force, so far as they are applicable to such proceedings.

18. These rules shall come into operation from and after the 31st December, 1882.

19. These rules may be cited as the Settled Land Act Rules, 1882.

(Signed) SELBORNE, C.
COLERIDGE, L.C.J.
G. JESSEL, M.R.
NATH. LINDLEY, L.J.
H. MANISTY, J.
E. FRY, J.

APPENDIX TO THE RULES.

FORM I.

TITLE OF PROCEEDINGS.

In the High Court of Justice,
Chancery Division,
Vice-Chancellor Bacon,
or
Mr. Justice Chitty,
[*or other judge before whom the application is to be heard.*]

In the matter of the estate [*or*, of the timber upon the estate], situate at in the county of , [*or*, of the chattels], settled by a settlement made by an indenture dated the day of , and made between [*or*, by the will of dated *or, as the case may be*].

And in the matter of the Settled Land Act, 1882.

FORM II.

FORMAL PART OF SUMMONS.

Title as in Form I.

Let all parties concerned attend at my chambers at the Royal Courts of Justice on day, the day of 18 , at o'clock in the forenoon, on the hearing of an application—

(*a.*) On the part of *A. B.*, the tenant for life [*or*, tenant in tail, *or as the case may be, describing the nature of the applicant's estate*] under the above-mentioned settlement.

Or, (*b.*) On the part of *A. B.*, the tenant for life [*or as the case may be*] under the above-mentioned settlement an infant, by *X. Y.*, his testamentary guardian [*or*, guardian appointed by order dated the , *or* next friend].

Or, (*c.*) On the part of *C. D.* and *E. F.*, the trustees of the above-mentioned settlement for the purposes of the above-mentioned act.

Or, (*d.*) On the part of *G. H.*, the tenant for life in remainder [*or*, tenant in tail in remainder, *or as the case may be, describing the applicant's interest*] under the above-mentioned settlement subject to the life interest of *A. B.* [*or as the case may be*].

Or, (*e.*) On the part of *I. J.*, the purchaser of the lands [*or*, the timber upon the lands, *or* chattels, *or as the case may be*] settled by the above-mentioned settlement.

Or, (*f.*) On the part of *I. J.*, the lessee under a mining lease dated the 18 , granted under the powers of the above-mentioned act of the mines and minerals under the lands settled by the above-mentioned settlement.

Or, (*g.*) On the part of *I. J.*, the mortgagee under a mortgage intended to be created under section 18 of the above-mentioned act of the lands settled by the above-mentioned settlement.

Or, (*h.*) On the part of *K. L.*, interested under the contract hereinafter mentioned.

Dated the day of 18 .

This summons was taken out by of , solicitor for the applicant.

To

(*Add the names of the persons* (*if any*) *on whom the summons is to be served.*)

FORM III.

SUMMONS UNDER SECTION 10 FOR GENERAL LEASING POWERS.

Title and formal parts as in Forms I. and II. *a* or *b*.

1. That the applicant [*or in the case of an infant* that the said *X. Y.* during the infancy of the said *A. B.*], and each of his successors in title [*or in the case of an infant*, each of the successors in title of the said *A. B.*], being a tenant for life or having the powers of a tenant for life under the above-mentioned act, may pursuant to section 10 of the said act be authorized from time to time to make building [*or* mining] leases of the lands comprised in the said settlement for the term of years [*or* in perpetuity] on the conditions specified in the said act [*or* on other conditions than those specified in sections 7 to 9 of the said act].

2. That the costs of this application may be directed to be taxed as between solicitor and client, and that the same when taxed may be paid out of the property subject to the said settlement, and that for that purpose all necessary directions may be given.

Note.—The proposed conditions ought not, except in simple cases, to be set forth in the summons.

FORM IV.

SUMMONS UNDER SECTIONS 10 OR 15 FOR AUTHORITY TO GRANT A PARTICULAR LEASE WHERE THE TENANT FOR LIFE HAS ENTERED INTO A CONTRACT.

Title as in Form I.

Formal parts as in Form II. *a* or *b*.

1. That the conditional contract, dated the 18 , and made between the applicant [*or* the said *X. Y.*] of the one part and of the

other part, for a [building *or* mining] lease to the said of the hereditaments therein mentioned for the term, and upon the conditions therein stated, may, pursuant to section 10 [*or* 15] of the above-mentioned act be approved, and that the said *A. B.* [*or X. Y.*] may be authorized to execute a lease in pursuance of the said contract.

2. (*Add application for costs as in Form III.* 2.)

FORM V.

SUMMONS UNDER SECTIONS 10 OR 15 FOR AUTHORITY TO GRANT A PARTICULAR LEASE WHEN NO CONTRACT HAS BEEN ENTERED INTO.

Title as in Form I.

Formal parts as in Form II. *a* or *b*.

1. That the [building *or* mining] lease intended to be granted to of the lands [*or* of the mansion house, &c.] settled by the said settlement may, pursuant to section 10 [*or* 15] of the above-mentioned act be approved, and that the applicant [*or* the said *X. Y.*] may be authorized to execute the same.

2. (*Add application for costs as in Form III.* 2.)

FORM VI.

SUMMONS UNDER SECTIONS 15, 35, OR 37 FOR A SALE OUT OF COURT OF THE PRINCIPAL MANSION HOUSE, AND DEMESNES, OR OF TIMBER OR CHATTELS.

Title as in Form I.

Formal parts as in Form II. *a* or *b*.

1. That the applicant [*or in the case of an infant* the said *X. Y.*] may be authorized to sell the principal mansion house [*or* the timber ripe and fit for cutting] on the land [*or* the furniture and chattels] settled by the above-mentioned settlement in such manner and subject to such particulars, conditions, and provisions as he may think fit.

2. That the costs of this application may be taxed as between solicitor and client, and that *C. D.* and *E. F.*, the trustees of the said settlement, may be at liberty to pay the costs when taxed out of the proceeds of the said sale [*or, in the case of timber*, out of the three-fourths of the proceeds of the said sale to be set aside as capital money arising under the said act], *or, if this Form is not applicable, as in Form III.* 2.

FORM VII.

SUMMONS UNDER SECTIONS 15, 35, OR 37 FOR SALE BY THE COURT OF THE PRINCIPAL MANSION HOUSE, AND DEMESNES, OR OF TIMBER OR CHATTELS.

Title as in Form I.

Formal parts as in Form II. *a* or *b*.

1. That the principal mansion house [*or* the timber ripe and fit for cutting] on the land [*or* the furniture and chattels], settled by the above-mentioned settlement, may be sold under the direction of the court.

2. (*Application for costs as in Form III.* 2.)

FORM VIII.

AFFIDAVIT VERIFYING TITLE.

Title as in Form I.

I, , of , make oath and say as follows:

1. By the above-mentioned settlement the above-mentioned lands [*or* certain chattels, *shortly describing them*] stand limited to uses [*or* upon trusts] under which *A. B.* is [*or* I am] beneficially entitled in possession as tenant for life [*or* tenant in tail, *or* tenant in fee simple, with an executory gift over, *or as the case may be*].

2. (*If it is the fact.*) The said *A. B.* is an infant of the age of years or thereabouts.

3. *C. D.*, of , and *E. F.*, of , are trustees under the said settlement, with a power of sale of the said lands [*or* with power of consent to or approval of the exercise of a power of sale of the said lands contained in the said settlement, *or* are the persons by the said settlement declared to be trustees thereof for purposes of the above-mentioned act].

FORM IX.

SUMMONS UNDER SECTION 22 BY PURCHASER FOR PAYMENT INTO COURT OF PURCHASE-MONEY OF SETTLED LAND, TIMBER, OR CHATTELS.

Title as in Form I.

Formal parts as in Form II. *e*.

1. That the applicant may be at liberty to pay into court to the credit of "In the matter of the settlement, dated the and made between [*or* will, &c.] proceeds of sale of the A. estate [*or as the case may be*], and in the matter of the Settled Land Act, 1882," the sum of £ on account of the purchase-money of the said A. estate [*or as the case may be*] settled by the said settlement [*or* will, &c.]

2. That such directions may be given for the investment of the said sums when paid into court, and the accumulation or payment of the dividends of the securities, representing the same, as the court may think proper.

FORM X.

SUMMONS UNDER SECTION 22 FOR PAYMENT INTO COURT BY LESSEE UNDER A MINING LEASE (*see* Section 11).

Title as in Form I.

Formal parts as in Form II. *f*.

1. That the applicant may be at liberty to pay into court to the credit of "In the matter of the settlement, dated the and made between [*or* the will, &c.] mineral rents under lease, dated the and in the matter of the Settled Land Act, 1882," the sum of £ being three-fourths [*or* one-fourth] of the rents payable by him under the said lease for the half-year ending the less £ the costs of payment into court.

2. That the applicant may be at liberty on or before the day of and the day of in every year during the term created by the said lease to pay into court to the credit aforesaid, so much of the rents payable by him under the said lease as is by section 11 of the above-mentioned act directed to be set aside as capital money arising under the said act after deducting therefrom the costs of payment in, the amount paid in to be verified by affidavit.

3. That the said sum of £ and all other sums to be paid into court to the credit aforesaid may be invested in the purchase of (*name the investment*) to the like credit, and that the dividends on the said when purchased may be paid to *A. B.*, the tenant for life under the above-mentioned settlement, during his life or until further order.

FORM XI.

SUMMONS UNDER SECTION 22 FOR PAYMENT INTO COURT BY MORTGAGEE (*see* Section 18).

Title as in Form I.

Formal parts as in Form II. *g*.

1. That the applicant may be at liberty to pay into court to the credit of "Money advanced on mortgage of lands settled by the settlement dated the and made between [*or* the will, &c.] and in the matter of the Settled Land Act, 1882," the sum of £ being the amount agreed to be advanced by him on mortgage of the lands comprised in the above-mentioned settlement less the costs of payment in.

2. (*Add directions for investment as in Form VIII.* 2).

FORM XII.

SUMMONS UNDER SECTION 26 (1).

Title as in Form I.

Formal parts as in Form II. *a* or *b*.

1. That the scheme left at my chambers this day for the execution of improvements on the lands settled by the above-mentioned settlement may be approved.

2. (*Add application for costs as in Form III.* 2.)

FORM XIII.

SUMMONS UNDER SECTION 26, SUB-SECTION (2) (ii) FOR APPOINTMENT OF AN ENGINEER OR SURVEYOR.

Title as in Form I.

Formal parts as in Form II. *a* or *b*.

1. That *M. N.* of engineer [*or* surveyor] may be approved as engineer [*or* surveyor] for the purposes of section 26, sub-section (2) (ii) of the above-mentioned act.

2. (*Add application for costs as in Form III.* 2.)

FORM XIV.

NOMINATION OF AN ENGINEER OR SURVEYOR BY THE TRUSTEES.

Title as in Form I.

We *C. D.* of and *E. F.* of the trustees of the above-mentioned settlement for the purposes of the above-mentioned act, hereby nominate of engineer [*or* surveyor], for the purposes of section 26, sub-section (2) (ii) of the said act.

(Signed) *C. D.*
E. F.

FORM XV.

SUMMONS UNDER SECTION 26, SUB-SECTION (2) (iii).

Title as in Form I.

Formal parts as in Form II. *a* or *b*.

1. That *C. D.* and *E. F.* the trustees of the above-mentioned settlement, for the purposes of the above-mentioned act may be directed to apply the sum of £ out of the capital money arising under the said

act in their hands subject to the said settlement in payment for [*describe the work or operation*] being [*part of*] an improvement executed upon the lands subject to the said settlement pursuant to a scheme approved by the said *C. D.* and *E. F.* under the said act.

2. (*Add application for costs as in Form III.* 2.)

FORM XVI.

SUMMONS UNDER SECTION 26, SUB-SECTION 3.

Title as in Form I.

Formal parts as in Form II. *a* or *b*.

1. That the sum of £ may be ordered to be raised out of the in court to the credit of and that the same when raised may be paid to upon his undertaking to apply the same in payment for [*describe the works or operation*] being part of an improvement executed upon the land settled by the above-mentioned settlement pursuant to the scheme approved by order dated the .

2. (*Add application for costs as in Form III.* 2.)

FORM XVII.

SUMMONS UNDER SECTION 31.

Title as in Form I.

Formal parts as in Form II. *a* or *b*.

1. That the applicant may be at liberty to enforce [*or* carry into effect *or* vary *or* rescind *as the case may be*] the contract entered into between the applicant of the one part, and of the other part.

2. Or that such directions may be given relating to the said contract as the judge may think fit.

3. (*Add application for costs as in Form III.* 2.)

FORM XVIII.

SUMMONS UNDER SECTION 34 FOR APPLICATION OF MONEY PAID FOR A LEASE OR REVERSION.

Title as in Form I.

Formal parts as in Form II. *a*, *b*, or *d*.

1. That the sum of £ being the proceeds of sale of a lease for years [*or* life *or* a reversion *or other interest describing it*] settled by

the above-mentioned settlement, may, pursuant to section 34 of the above-mentioned act, be directed to be applied for the benefit of the parties interested under the said settlement in such manner as the court may think fit.

2. (*Add application for costs as in Form III.* 2.)

FORM XIX.

SUMMONS UNDER SECTION 38 FOR THE APPOINTMENT OF NEW TRUSTEES.

Title as in Form I.

Formal parts as in Form II. *a*, *b*, *c*, or *d*.

1. That *G. H.* and *I. J.* may be appointed trustees under the above-mentioned settlement for the purposes of the above-mentioned act.

2. (*Add application for costs as in Form III.* 2.)

FORM XX.

SUMMONS UNDER SECTION 44.

Title as in Form I.

Formal parts as in Form II. *a*, *b*, or *c*.

1. That it may be declared that (*set out the declaration required*).

2. (*Add application for costs as in Form III.* 2, *or as the circumstances require.*)

FORM XXI.

SUMMONS UNDER SECTION 56 FOR ADVICE AND DIRECTION.

Title as in Form I.

Formal parts as in Form II. *a* to *h*.

For the opinion, advice, and direction of the judge on the following questions:—

1. Whether
2. Whether
3. Whether

(*or if the questions involve complicated facts.*)

for the opinion, advice, and direction of the judge on the facts and questions submitted by the statement left in my chambers this day.

(*Add application for costs as in Form III.* 2.)

FORM XXII.

SUMMONS UNDER SECTION 60 FOR APPOINTMENT OF PERSONS TO EXERCISE POWERS ON BEHALF OF INFANT.

Title as in Form I.

Formal parts as in Form II. *b*.

1. That the powers conferred upon a tenant for life by sections 6 to 13, both inclusive, and sections 16 to 20, both inclusive, of the above-mentioned act (*or such other powers as it is desired to exercise*) may be exercised by the said on behalf of the said during his minority.

2. (*Add application for costs as in Form III.* 2.)

FORM XXIII.

SUMMONS FOR DIRECTIONS AS TO SERVICE OF A PETITION.

Title as in Form I.

Formal parts as in Form II.

That directions may be given as to the persons to be served with the petition presented in the above matter on the day of , 18 .

MIDDLE

INDEX TO DISSERTATIONS AND NOTES.

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„ „ S. L. A. ..denotes Settled Land Acts.

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PRINTED BY C. F. ROWORTH, GREAT NEW STREET, FETTER LANE, E.C.

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